# United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 76-7052

# United States Court of Appeals

For the Second Circuit



Nelson Bunker Hunt, W. Herbert Hunt and Lamar Hunt,

Plaintiffs-Appellants,

against

MOBIL OIL CORPORATION, TEXACO, INC., STANDARD OIL COM-PANY OF CALIFORNIA, THE BRITISH PETROLEUM COMPANY, LTD., SHELL PETROLEUM COMPANY, LTD., EXXON CORPORATION, GULF OIL CORPORATION, OCCIDENTAL PETROLEUM CORPORATION, TION, GRACE PETROLEUM CORP., and GELSENBERG AG,

Defendants-Appellees.

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A. DANIEL FUSARO, CLERK

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JOINT APPENDIX ON APPEAL FROM FINAL JUDGMENT OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Counsel of Record Are Listed on Inside of Front Cover

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Attorney for Defendant-Appellee
Grace Petroleum Corp.

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New York, New York 10019
Attorneys for Defendant-Appellee
Gelsenberg, AG

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Exhibit D—Further Memorandum of Confirma- tion Dated December 16, 1971 JA52
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Notice of Motions and Motions of Certain Defendants to Dismiss Complaint
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Plaintiffs' Notice of Motion Pursuant to Rule 54(b)JA110
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Judgment Dismissing Third Claim in Complaint JA125
Plaintiffs' Notice of Appeal JA127

DATE	NR.	PROCEEDINGS
3-07-7 3-07-7		employee or agent of Paul, Weiss, Rifkind, etc. serve a copy of the summons and complaint upon defts. Mobil Oil Corp., Texaco Inc, Standard Oil Co. of Calif., Exxon Corp., Gulf Oil Corp., Occidental Petroleum Corp. and W.R. Grace & Co. Clerk.
3-11-75		Filed certificate of mailing of summons and complaint on 3-11-75 served— The British Petroleum Co, LATD # 6120942 Shell Petroleum Co. LATD Britannic House Shell La London S.E. 1, England London EC2Y9BU, England #6120493  ret. receipt received on above  Geloeb berr AC Hossetrasse 2, Essen 4300 Postfach 30 West Germany 61204924
-27-75	4-	What stin and order ext. Mobil Oil Corp. time to answer to 5-15-75-Weinfled, J.
2-21,-75	L5-	Filed defts first request for production of documents to pitt.
2 21. 75	16	wiled dofts, frint set of interrog, to pitt.
-27-75	-7-	Filed stip. and order ext. deft. Exxon Corp. time to answer to 3-15-75-Weinfeld, J
3-31-75	-8-	Filed stip. and order ext. deft. Texaco Inc. time to answer to 4-15-75 -Weinfeld,
	1	Filed stip. and order ext. deft. W.R. Grace & Co. time to answer to the complaint —Weinfled, J.
L-02-75	-10	Piled stip, and order ext. deft. Standard il Co. of California time to answer to
		1 11 1 1 1 1
4-03-75	+11-	Filed stip. and ext. deft. British Petroleum Co. Ltd. time to answer to complaint
N. Ol. 76	112	to 5-15-75-Weinmidd, J. Filed Consent OHDER ext. deft. Shell Petroleum Co. time to an amount o 5-15-75
		Weinfeld. J.
04-04-75	\$113.	Filed stip. and order sxt. deft Gulf Oil Corp. time to unswer to the complaint to
		5-15-75-Weinfeld, J.
04-08-7	F-14-	Filed stip and order ext. deft. Texaco Inc. time to answer to the complaint to 5-15-75-Weinfled, J.
01-08-79	115	Riled pltf's request for inspection of documents .
04-08-7	5-16-	Filed pltf's interrog. (first set) and pltf's rule 34
04-08-75	×17-	Filed summons and affdvt. of serviceby Edward Sutton served Texaco, Inc
	1	Mobil Oil Corp. W. R. Grace & Co. 135 E 42 St. NYC
		150 E. 42 St. NYC 1114 Ave of the Americas
0h-10-7	9-18	Filed stip. and order ext. deft. Gelsenberg A.G. to answer to the complaint to 5-15-75-We nfeld, J.
04-14-7	5-19	Pileddeft. Mobil Oil Corp. notice of taking deposition of pltf. Nelson Bunker Run
04-24-7	\$ 20	on 5-20-75.  Piled stip. and order ext. time of deft. Gelsenberg to answer pltf's interrog.  (initial set) 6-16-75.— Weinfeld, J.
04-28-7	5-21-	Piled Consent Order that the time of Shell Petroleum Co. limited to answer or obto pltt's interrog. (initial set) and pltr's rule 34 request is ext. to 6-16—Weinfeld, J.
		Filed and brder ext. defts time to answer to 6-16-75. and the pltf's time to appropriate with respect to the defts. first set of interrog. is ext. to 6-16-75. and the deposition of Helson Bunker Hunt by deft. Mobil Oil Corp. is postponed until 6-21-75. —Weinfeld. J.
		Filed stip. and order that the time of deft. Gelsenberg A.G. to answer complaint is ext. to June 16,1975. So ordered, Weinfeld, J.
)5-14 -	1	Filed deft. Mobil dil affdt. and notice of motion to dismiss,etc. ret. on: June 3 1975 at 2:15pm in Rm.706
5-16-79	5/2	5- Filed deft. Texaco Inc. affdvt. and notice of motion to dismiss the purported
	X	antitrust claims of the complaint, etc. ret. on Mune 3, 1975.

weinfeld, J.

HL	CORP.,	ET AL	ADDITIONAL	ATTY"S	SHEET
		M-CIV	1160-EW		

			Date Or
ASE			
4-75	Petroleum Company Ltd.	CRAVATH, SWAINE & MOORE	
4-15	Belorena comband non-	1 Chase Maniattan Plaza	
		how York, New York 10005	
	Galcanbers in it	Wildel. & Mark	
		A West Clat St., NYC	
		Raigi. V. Doriu.	
1-12	Guli vil Corporation	Gulf Oil Corp.	
		Pittsburgh, Penn. 15230 (414) 391-240	0
	la oul de of California	Yord, Day & Lord	
-26-75	Standard Oil Co of California	25 Broadway NYC 10004 344-8480	
		and the same of th	
	1	Leo A. larkin	
26-76	Grace Petroleum Corp.	1114 Aveus of the Americas	
		New York, NY 10036	
	1	new lock, mi	
	1	Philips, Nizer Benjamin, Krim & Ballon	
26-76	Occidental Petroleum Corp.	40 West 57th St.	
		New York, NY 10019 977- 9700	
		New York, NI	
25 76	Colsenberg Aktiengeselleuhaft	Windels & Marx 51 W. 51st. NYC 10019 977 9600	
-,		51 W. 51st. MYC10019977 9600	
27-76	Texco Inc.	Courles P. Kazlauskas Jr.	
		G. Kenneth Handley & Lawrence R. Jerz	
		135 E. 42nd St. NYC 10017 953-6093	
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01-1-11	- Filed Stip, and order unstituting that office letter and the caption
	aportition and the same transfer of the same transf
	The state of the s
	0-20-/5; deits reply papers by 0-11-/5 wei reid, J.
	6-20-75; delts reply papers by 6-11-75 Wel leid; 5.  -29- Filed selp, and older ext. delt. Gelsenberg AG.'s time to answer complaint,  -29- Filed selp, and older ext. delt. Selsenberg AG.'s request to 6-15-75
00-11-70	-24- Filed saip, and older ext. deft. belsenberg wo. interior, (first set) and to respond to pltf's request to 6-16-75
	interrop, (tirst set) and to respond
	keineta, J se Files set affave. and notice of mation for stay of pre-trial discovery -
40-13-13	
	-31- Fired detty generalisms in support of motion to stapy pre-trial discovery.
JU-13-13	
10-11-0	etc. i est. to 7-16-75; mever to increog, also ext. to 7-16-75
***	all the plus affave. in opposition to defts motion for a stay.
06-23-75	
06-23-7.	-34- riled pict, and orandum in apposition to defin motion to dismiss.
Un-25-75	dulle thilly to under the
Un=24-13	
	Til maring granted only with respect
06-21-15	to certain in errog., otherwise denied. Detts to serve answers to interrog.
	to create in erroge, otherwise denred.
	according to dates presently scheduled. So observed in support of
07-10-75	37. Filed deft. S. Oil Co Of California supplemental memorandum in support of mation of certain defts to dismiss complaint
	motion of certain deads of the state of memorandum in support of motions
07-11-75	
	The same of the control of the contr
07-14-75	-35 Filed stip, and order ext. delt. delta distribution for hearing to dismiss complaint
07-17-15	
	-1/1- Filed pltf. Appendix to motion to dismiss complaint (G. Aktiegesellschaft)
07-17-75	
07-16-7	
07-16-75	
07-17-7	
07-17-7	1-45- Filed ANSWER and objections of dert Standard Oll Co. of Calif.
	(first set) -h6- Filed hesponse of deft Texaco Inc. to pltf's rule 3h request
07=17-7	- ite riled hesponse of delt related into the state intermed (initial set)
87=17-7 87-17-7	-47- Filed Response of Texaco Inc. to pltf's interrog (initial set)
07-17-7	5 -48- Filed Response of deit. The British Petroleum Co. Ltd to certain
07-17-75	-19- Filed ANSWER and objections of the fittish to the state of the st
-	mitte intermed (initital set)
07-17-7	5 -50- Filed AliSWER and objections of deft Exxon Corp. to certain of pltf's
	initial cat of interrog dated )=(=()
07-17-7	
07-17-75	-52- Filed Response of deft Gulf Oil Corp. to plt's interrog. pursuant to
	male 33
07-17-75	53- Filed Consent Order that the time of the Shell PetroleunCo. Ltd. to answer
	on make an motion (including but not limited to an motion directed
	the personam jurisdiction of the Court or sufficiency of service of
50 - 1 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 - 100 -	mmcass) is ext. to 8-18-75
AND THE RESERVE OF THE PERSON	and that the time of Shell Petroleum Co Limited to answer or object
encomercial material control of	to pltf's interrog. (initial set) and pltf's ruel 34 request, served
epertyres to the control of the states	complaint, is ext. to 8-18-75-Weinfeld, J.
SECOND STREET,	THE RESIDENCE OF THE PROPERTY
D C. 105	Criminal Continuation Sheet

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MODIL OIL CORP

Page-j-

DATE	PROCEEDINGS
-75 -5e-	Filed Response of deft Gulf Oil Corp. to pltf's request for production of documents
7-25-75	-55- Filed deft. Aktiengesellischaft affdyt. and notice of motion ti dismiss the complaint ret, 8-19-7
7-29-75	-56- Filed letter of attorney for deft. Culf Oil Corporation to substitute Mr. Ralph I & John E. Bailey for Messrs. Frank Morgan and Frank O'Hara
7-29-7%	-47- Filed deft. Occidental's answers and objections to certain of pltf's interrogate (initial set ) dated March 7. 1975.
0 0 36 05	-8- Filed deft. Occidental Petroleum Corporation's response to pltf's Rule 32 reques
8-12-75	ret. 8-26-75.
8-12-75 8-07-75	-61- Filed pltf. memorandum in support of above motion for stay of arbitration -62- Filed pltf. notice of taking deposition of of John J. McCloy on 8-20-75.—subp.
8-07-75	wiled nitf notice of taking deposition of J. D. Atlas on 8-18-75 subp. 188.
8-22-75	-(1 Filed pltf. affdvt. in opposition to the motion of deft ("Gelsenberg") to dismi
08-22-75 18-27-75	-e- Filed pltf. memorandum in opposition to Gelsenberg's motion to dismiss the comp
	to 9-18-75, and that the time of The Shell Petroleum Co Ltd. Line to
	answer to pltf interrog. (initial Set ) is ext. to 9-18-75-Weinfeld. J.
8-27-75	-c;- Filed stip. and order the argument of the motion to dismiss by Gelsenberg AG for 8-19-75 is rescheduled to 9-16-75, answering papers of pltf. shall be ser
	on or before 8-20-75, Gelsenberg's reply shall be served no later than 9-15-79.  Weinfeld, J.
9-10-75	-68- Filed deft. Standard Oil Co. of California notice of motion for an order
	pursuant 26 and 45 quashing ret. 9-16-75
09-10-75	-69- Filed deft, Standard Oil Co of Salaferois affdyt, in support of above motion
	69- Filed deft. Standard Oil Co of Galafernia affdyt. in support of above motion
09-10-75	-69- Filed deft. Standard Oil Co of Galafárnia affdyt. in support of above motion for an order quashing -70- Filed deft Standard Oil memorandum of law in support of the Joint motion of certain defts to quash and to wacate notice to take the departion of
09-10-75 19-12-75	-69- Filed deft. Standard Oil Co of Galafarnia affdyt, in support of above motion for an order quashing -70- Filed deft Standard Oil memorandum of law in support of the Joint motion of certain defts to quash and to wacate notice to take the departion of J. D. Atlas -71- Filed deft. Texaco's memorandum in opposition to pltf's motion for a stay of
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09-10-75 09-12-75 09-15-75 09-15-75	for an order quashing  70- Piled deft Standard Oil memorandum of law in support of the Joint motion of certain defts to quash and to macate notice to take the departion of J. D. Atlas  -71- Filed deft. Texaco's memorandum in opposition to pltf's motion for a stay of arbitration.  -72- Filed Reply memorandum of Galsemberg in response to pltf's memorandum in opposition  -73- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -74- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -75- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -76- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -77- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -78- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum in opposition  -79- Filed Appendix to Reply memorandum of Gelsemberg in response to pltf's memorandum of Gelsemberg in response to pltf's memorandum of Gelsembe
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09-10-75 09-12-75 09-15-75 09-15-75 09-17-75	for an order quashing  70- Filed deft Standard Oil Eco of Sulaffernia affdyt, in support of above motion for an order quashing  70- Filed deft Standard Oil memorandum of law in support of the Joint motion of certain defts to quash and to mocate notice to take the departion of  J. D. Atlas  71- Filed deft. Texaco's memorandum in opposition to pltf's motion for a stay of arbitration.  72- Filed Reply memorandum of Galsenberg in response to pltf's memorandum in opposition  73- Filed Appendix to Reply memorandum of Galsenberg in response to pltf's memorandum in opposition  74- Filed Appendix to Reply memorandum of Galsenberg in response to pltf's memorandum in opposition  75- Filed Appendix of Rection of Salaenberg in response to pltf's papers with respect to motion should be served on or before 10-14-75 pltfs's andwards papers with respect to motion should be served on or before 10-3-75 defts reply papers shall be served on or before 10-13-75 and that the deposition of J. B. Atlas is adj. to 10 days following entry of the order adj. No  -Neinfeld, J.  76- Filed ANSWER of deft The Shell Petroleum Co. Ltd.  77- Filed Consent order ext. deft. Shell Petroleum Co. Ltd. to smend the answer place and excluding the 180th day following entry of orders determining both
09-10-75 09-12-75 09-15-75 09-15-75	for an order quashing  70- Filed deft Standard Oil memorandum of law in support of the Joint motion of certain defts to quash and to smoate notice to take the departion of J. D. Atlas  71- Filed deft. Texaco's memorandum in opposition to pltf's motion for a stay of arbitration.  72- Filed Reply memorandum of Gelsenberg in response to pltf's memorandum in opposition  73- Filed Appendix to Reply memorandum of Gelsenberg in response to pltf's memorandum in opposition  74- Filed Appendix to Reply memorandum of Gelsenberg in response to pltf's memorandum in opposition  75- Filed Appendix to Reply memorandum of Gelsenberg in response to pltf's memorandum in opposition  76- Filed Appendix to motion should be served on or before 10-13-75 and that the deposition of J. D. Atlas is adj. to 10 days following entry of the order adj. Re-Neinfeld, J.  76- Filed ANSWER of deft The Shell Petroleum Co. Ltd.  77- Filed Consent order ext. deft. Shell Petroleum Co. Ltd. to smend the answer pltf's intern (First Set) to 10-6-75.—Weinfeld, J.

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i		PROCEEDINGS	Date !
STA			
00-75	-80-	Piled stip. and order adj. defts ret. for motion to 11-11-75, pltf's answering papers shall be served on or before 10-21-75. lefts reply papers shall be served on or before 11-7-75 and the deposition of J.D Atlac is adj. from 9-19-75 to 10 days following entry of the	011
5-75	a	The opinion 1,324deft. Gelsenbergs's motion to dismiss is denied in the opinion of the sense of the opinion	
22-75	90	Biled mitt affart in opposition to defts motion seeking to quash	
-22-75	-83-	Filed pltf. memorandum in opposition to delts motion to quash the supposite	
-23-75		filed stip. of protective order of all documents to be produced by a party in response to request by a non-party as indicated—Weinfeld, J.	
-29-75	-85-	Filed deft. Gelsenberg Ag, notice of motion for reargument, leave to appeal and a stay of all proceedings pending appeal and supporting memorandum	
0-29-75	1	ret.11-11-75. Filed deft. The Shell Petroleum Co. Ltd. Response to pltf's rule 34 request dated 3-7-75	
8-75	1	Piled deft. The Shell Petroleum Co Ltd. objections answers to certain interrog's of pltf.	
1-05-75	-88-	Filed OPinion #13311 that certain defts (Mobil Oil Corp. et al) excepting only defts Shell Petroleum Corpt., Ltd. and Gelsengerg AG. move to dism the first, second and third claims of the complaint. Pltfs cross-motion	88
	ļ	for a stay of Texaco's proposed arbitration of the breach of contract	1
		calim is granted. Motion by the other defts for a stay of the fourth	1
	ļ	claims is granted execpt as indicated herein. The first and secon anti-	]
		trust claims; are stayed form proceeding to arbitration as to the breac	<b>d</b>
		trust claims; are stayed form proceeding to arbitration as to the breact of contract claim until the final determination of this action. In con-	
		trust claims; are stayed form proceeding to arbitration as to the breact of contract claim until the final determination of this action. In conclusion, the defts motion to dismiss is denied as to the first and sec granted as to the third claim and motion as to the fourth claim are dis	ond o
-07-75	-89-	trust claims; are stayed form proceeding to arbitration as to the breact of contract claim until the final determination of this action. In conclusion, the defts motion to dismiss is denied as to the first and sec granted as to the third claim and motion as to the fourth claim are distoft as indicated—Weinfeld, J. m/n  Filed pltf. memorandum in opposition to Gelsenberg's motion for leave to reargue and for a certificate authorizing an interlocutory appeal	ood o
		trust claims; are stayed form proceeding to arbitration as to the breach of contract claim until the final determination of this action. In conclusion, the defts motion to dismiss is denied as to the first and sec granted as to the third claim and motion as to the fourth claim are distoff as indicated.—Weinfeld, J. m/n  Filed pltf. memorandum in opposition to Gelsenberg's motion for leave to reargue and for a certificate authorizing an interlocutory appeal.  Fileddeft, Gelsenberg memorandum in Reply to pltf's memorandum in opposition.	posed
-10-75	-90-	trust claims; are stayed form proceeding to arbitration as to the breac of contract claim until the final determination of this action. In conclusion, the defts motion to dismiss is denied as to the first and sec granted as to the third claim and motion as to the fourth claim are distoff as indicated.—Weinfeld, J. m/n  Filed pltf. memorandum in opposition to Gelsenberg's motion for leave to reargue and for a certificate authorizing an interlocutory appeal.  Fileddeft. Gelsenberg memorandum in Reply to pltf's memorandum in opposition to the motions of Gelsenberg for reargument, leave to appeal and a stay all proceedings pending appeal.	posed
-10-75	-90-	trust claims; are stayed form proceeding to arbitration as to the breac of contract claim until the final determination of this action. In conclusion, the defts motion to dismiss is denied as to the first and sec granted as to the third claim and motion as to the fourth claim are disconsisted.—Weinfeld, J. m/n  Filed pltf. memorandum in opposition to Gelsenberg's motion for leave to reargue and for a certificate authorizing an interlocutory appeal.  Fileddeft. Gelsenberg memorandum in Reply to pltf's memorandum in opposition to the motions of Gelsenberg for reargument, leave to appeal and a stay all proceedings pending appeal.  Memo, end, on documents # 85 After further and careful consideration of	cod o
-10-75 :-12-75	-90-	trust claims; are stayed form proceeding to arbitration as to the breac of contract claim until the final determination of this action. In conclusion, the defts motion to dismiss is denied as to the first and see granted as to the third claim and motion as to the fourth claim are disconsisted.—Weinfeld, J. m/n  Filed pltf. memorandum in opposition to Gelsenberg's motion for leave to reargue and for a certificate authorizing an interlocutory appeal.  Fileddeft. Gelsenberg memorandum in Reply to pltf's memorandum in opposition to the motions of Gelsenberg for reargument, leave to appeal and a stay all proceedings pending appeal.  Memo, end, on documents # 85. After further and careful consideration of deft's various contentions, the motion is denied in all respects—Weinfeld,	cod o
-10-75 :-12 <b>-75</b>	-90-	trust claims; are stayed form proceeding to arbitration as to the breac of contract claim until the final determination of this action. In conclusion, the defts motion to dismiss is denied as to the first and see granted as to the third claim and motion as to the fourth claim are disconsisted.—Weinfeld, J. m/n  Filed pltf. memorandum in opposition to Gelsenberg's motion for leave to reargue and for a certificate authorizing an interlocutory appeal.  Fileddeft, Gelsenberg memorandum in Reply to pltf's memorandum in opposition to the motions of Gelsenberg for reargument, leave to appeal and a stay all proceedings pending appeal.  Memo, end, on documents # 85. After further and careful consideration of deft's various contentions, the motion is denied in all respects—Weinfeld, m/n.  Filed deft. Standard Gil Co. of Cal.'s affdyt. of Gordon B. Spivack.	cod o
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WEINFELD, J.

PATE.	PROCEEDINGS	India or
; 	tecum and to vacate the notice to take deposition etc. Accordingly, disposition at Louise 1. held in absymment to make the matter in referred to Mag. Harton to hear and report on, but limited to as in limits leave the report of the matter in referred A.J. m.	ica:
1	Led dort. Maken Corp. supplemental response to plif's rule 31, request dated 3-7- Leddort. Exxon domp. supplemental response to plif's initial set of interrog.  Find doft. The Smith h Petroleum Co., btd. supplemental response to plif's mule the request.	
11-13-15-10	00-Filed deft. British Petroleum Co. Ltd. supplemental response to pltf's initia set of interrog. dated 3-7-75.	1
-75 -10	O7- Filed stip, and order deft, Mobil Oil Corp. et. al. time to answer to the complaint 10 12-17-75-Weinfeld, J.	
1-19-75  -10	O2 Filed pltf. notice of taking deposition of John J. McCloy on 12-1-75. O3- Filed deft. Tesaco Inc. supplemental response to pltf's initial set of interrog.	**
	Ol- Filed notice of appearance for deft Gulf Oil Corp. OS- Filed woft Standard Oil Co of California supplemental responses to pltf's	
	interrog. dated 3-7-75.	
T	106- Filed deft. Texaco's supplemental response to pltf's interrogatories (initial set).	
1-26-75 -	107- Filed deft, Texaco's supplemental response to pltf's Rule 34 request.	
75 -1	08- Filed deft. Shell Patrolaum Co. Ltd. supplemental objections to certain of	
12-07-75 -1	C9- Filed Content Order that the time of the Shell Petroleum Co. to amend the caser of the Chell Petroleum Co. Ltd. is ext. to 12-17-75-Weinfeld	J.
11-21-75 -11	10- Filed deft. The Shell Petroleum &c. Ltd. supplemental response to pltf's rule 34 request dated 3-7-75.	
11-01-75 -11	11- Piled deft, Standard Dil Co. of California notice of motion	
11 - 1 - 75 -1	for an order pursuant to to rule 26 and 45 ret. 12-16-75.  112- Filed deft. Standard Oil So of California affdyt. in support of above motified.	on
-05-75 -11	12- Filed delt. Standard Oil memorandum of law in support of above motion of	
	14- Filed dofa. Mobil Cal Comp. jairs or the mation of certain defts to quash t	he
2-16-75 -11	6. Fillable time and again act. define time to enswer to 1-16-75Weinfeld, J.	
- 75-11	4. Filed pltf. affavt. and notice of motion for an order pursuant to rule 54(b)  direction energy of a final judgment dismissing the third count ret. 1	
<u>-1</u> 1	7- Pilot pltf, memorradum in support of pltf's above motion for a rule 54	(b)
1-0 -75	Pilod Memo. 10. 22 2011ch Cited 12-5-75. Disposed of as indicated upon the	1
	einfeld, J m/a	
1 1 . 751	18- Filed consent orier that the time of the The Shell Petroleum Co. Ltd. time	
3 70 11	(a) is ext. to 1-16-75Weinfeld J. m/n	
i	12- Miled svip. and order edj. rot. date of pitf. metion to 1-6-75 and that report in apposition may be served on or before 1-2-76Veinfeld, J.	
	C- Filed plif. notice of taking deposition of deft. Exxon at dates and time	
23- 76 -12	1 - Filed true copy of U.S.C.A. stip. dismissing the appeal without costs	
1-23-76 1	22) Filed defts' memorandum in opposition to pitf's motion under Rule 5h(b)	
1-23-76 1	23) Filed copy of transcript of record of proceedings dated 1-16-76. 24) Filed pltf's amended notice to take depositions of Morman L. Roomey on 3-1-	6.

LATE		PROPERTINGS	Date Orde udgment N
		West Mary M. Schuler on 3-23-76	<del>-</del>
1-21-76		Filed pltfs amended notice to take deposition of Henry M. Schuler on 3-23-76	
22-76	ered 40	Filed Memo. endorsed on document # 116. pltfu motion for final judgment	
		under rule 54 (b) to dismiss 3rd Antitrust claim is granted upon the	
		express condition that the appeal be prosecuted with dispatch Weinfeld	.,
7-76	-126-	Filed stip. and order emending the complaint to add W. Herbert and Lener	
		Phint as party piti. Mach delt and I have the	• • • • • • • • • • • • • • • • • • • •
		to the amended complaint-Weinfeld, J.	
-28-76	-127-	Filed deft. Occidental Petroleum Corp. arrata statement	
-29-75	-128-	Pilad mitt to affirst and order to show Cause UTUE Dec the Gover Out	
		Corp. et al. show suse on 2-3-15 in has for at zon any in order should	
		not be madeWeinfeld, J.	
1-30-76	-129-	Filed deft Exxon Corp. memorandum in support of its cross-spplication for	
		review of the magistrate's ruling, and in opposition to pltf's order to	
		show cause	
-04-76	-130	Filed Judgment and order that the 3rd-ouse of action of the complaint is	
	1	Aiomissed as to all defts B/D	
09-76	-131-	Filed deft. Exxon Corp. notice of motion for an order pursuant to rule 20	
20 July 25		enabling defts to apply for appeal 781, 2-1/-/0	
09-76	-132-	Filed defts memorandum in support of their motion for certification under	
41 1e		mile 28(b)	
09-76	-133-	Filed conv of transcript of record of proceeding dated 2-3-76	
9-76	Married and or	Filed Memo, end, on document \$125 Magistrate's report 18 overrused to the	
,		extent that nitf, may examine in advance documents referred to in Ar-	•
		Jackson's letter, other than those as to which a motion is now pending	
		hefers the Mag. So Ordered Weinfeld. J. 18/11	
-09-76	-134-	reled deft. Ryon Corp. memorandum in support of its cross-application for	
		review of the magistrate's ruling, and in opposition to pltf's order to	
		show cause.	
-10-76	-135-	show cause.  Filed pltfs notice of appeal to the U.S.C.A for the Second Carouit from the	
			bin.
		A. Duncan Whitaker, Gordan D. Spryson, McDeine John I Haves, Charl	bin,
	1	A. Duncan Whitaker, Gordan B. Spivack, Robert Maccarte, Milton J. Sohn John E. Bailey, Robert Salman, Turner H. McBaine, John J. Hayes, Charl	bin, es
		TO TO THE DANGE OF SEIMON CHIPPING H. MCDMILLE OF LAND VILLE	bin, es
		John E. Bailey, Robert Salman, Turner R. McBaile, John F. Kazlanskas, Jr. Richard H. Zabm, Bruce A. Hecker Leo Larkin John	
2-18-76	m1 36=	John E. Bailey, Robert Salman, Turner R. Acharde, John F. Kazlauskas, Jr. Richard H. Zabm. Bruce A. Hecker Leo Larkin John Rupper Filed joinder of Mobil Oil Corp. in motion of other defts for certification	
		John E. Bailey, Robert Salman, Turner R. Achards, John F. Kazlauskas, Jr. Richard H. Zabm, Bruce A. Hecker Leo Larkin John Rupper  Filed joinder of Mobil Oil Corp. in motion of other defts for certification of the control of the co	303
	4.27	John E. Bailey, Robert Salman, Turner R. Acharde, John F. Kazlauskas, Jr. Richard H. Zabm. Bruce A. Hecker Leo Larkin John Rupper Filed joinder of Mobil Oil Corp. in motion of other defts for certification mursuant to 28(b) Filed deft. Gelsenberg AG motice that defts motions to dismiss the Frist.	m
	4.27	John E. Bailey, Robert Salman, Turner R. McDaine, John F. Kazlauskas, Jr. Richard H. Zahm. Bruce A. Hecker Leo Larkin John Hupper Filed joindar of Mobil Oil Corp. in motion of other defts for certification pursuant to 28(b) Filed deft. Gelsenberg AG motice that defts motions to dismiss the Frist.	m
2-20-16	-137-	John E. Bailey, Robert Salman, Turner R. Hobarte, John F. Kazlanskas, Jr. Richard H. Zahm, Bruce A. Hecker Leo Larkin John Hupper Filed joindar of Mobil Oil Corp. in motion of other defts for certification mursuant to 28(b) Filed deft. Gelsenberg AG motion that defts motions to dismiss the Frist Colaimenton motion is now to the before Judge Weinfeld 2-24-76 or as	an .
2-20-16	-137-	John E. Bailey, Robert Salman, Turner R. McDaine, John F. Kazlauskas, Jr. Richard H. Zahm. Bruce A. Hecker Leo Larkin John Hupper  Filed joinder of Mobil Oil Corp. in motion of other defts for certification pursuant to 28(b)  Filed deft. Gelsenberg AG motice that defts motions to dismiss the Frist 2 claimenton motion is now the motion before Judge Weinfeld 2-24-76 or as soon as commsel can be heard.  Filed pltfs memorandum in opposition to defts motion for certification	303
2-20-16 -20-76	-137- 1 and -138-	John E. Bailey, Robert Salman, Turner R. McDaille, John F. Kazlanskas, Jr. Richard H. Zahm, Bruce A. Hecker Leo Larkin John Hupper Filed joindar of Mobil Oil Corp. in motion of other defts for certification mursuant to 28(b) Filed deft. Gelsenberg AG motice that defts motions to dismiss the Frist 2 claimenton motion is now the motion before Judge Weinfeld 2-24-76 or as soon as commsel can be heard.  Filed pltfs memorandum in opposition to defts motion for certification	on
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-20-76	-137- 1 and -138-	John E. Bailey, Robert Salman, Turner R. Mchaine, John F. Kazlauskas, Jr. Richard H. Zahm. Bruce A. Hecker Leo Larkin John Hupper  Filed joinder of Mobil Oil Corp. in motion of other defts for certification pursuant to 28(b)  Filed deft. Gelsenberg AG motice that defts motions to dismiss the Frist claimenton motion is now the motion before Judge Weinfeld 2-24-76 or as soon as commsel can be heard.  Filed pltfs memorandum in opposition to defts motion for certification under rule 28(b)	on .
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DATE:			****
11111		PROCEEDINGS	Date :
5-02-76	-147-	Filed pltfs memorandum in opposition to defts motion for certification	
		under rule 28 (c)	
3-02-76	-11,8-	Filed upinion # 1,3976 Deft. Exxon and other defts move for a certifica	-
	:	to permit them to appeal from this court's order of 11-5-76 denying	€.
		their motion to dismiss On 1-22-76 this court granted pltf's	
	:	application for an order directing the entry of final judgment of	
		dismissa! of pltf, third claim defts argue this they assert that	t
		basic fairness favors the allowance of this motion Accordingly	
		under the strict admonition of the Court of Appeals to rigorously	
		adhere to the precise conditions of section 1292(b), this Court	
-		perforce must deny defts motion without condidering the bendered	
		issue of basic fairness to or convenience of the movants-Weinfeld,	J.
		m/n	
	1-1-	Filed deft. Standard Oil Co. of Colifornia cross notice of taking depos	itio
27-76	-149m	of Norman L. Rooney, on 4-7-76.	
		Piled ANSWER of deft. The British Petroleum Co. Ltd.	S
3-02-76		Filed ANSWER of delt. The prilibil retrolled vo. htt.  Filed defts. notice of taking deposition of all parties on listed	
-98-16	-151-		
	·	schedule A,	
-02-76	-152-	Filed Consent Order that the time for The Shell Petroleum Co. Ltd. to	
	ļ	answer against the Amended Complaint is extended to 3-12-76-	
		Weinfeld, J.	
-27-76	-953	Filed ANSWER and Counterclaims of deft. Texaco Inc.	0
	-154-	Filed notice of record on appeal has been certified and transmitted to	
	<u> </u>	the U.S.C.A for Second Circuit on 3-2-76	
-02-76	-155-	Filed deft. Standard Oil Co. cross notice of taking deposition of Georg	a
		Henry Mayer Schuler, and Christie & Montgomer on 3-23-76	
3-04-76	1=156-	Filed defts interrog. (Second Set)	
		Filed defis second request for production of documents directed to pltf	8
-01-76 03-09-76	158)	Filed transcript of record of proceedings dated 1-16-76.	1
			- 90 %

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

--x

NELSON BUNKER HUNT, W. HERBERT HUNT and LAMAR HUNT,

75 Civ. 1160 (EW)

Plaintiffs,

AMENDED COMPLAINT

-against-

MOBIL OIL CORPORATION, TEXACO,
INC., STANDARD OIL COMPANY OF
CALIFORNIA, THE BRITISH PETROLEUM
COMPANY, LTD., SHELL PETROLEUM
COMPANY, LTD., EXXON CORPORATION,
OCCIDENTAL PETROLEUM CORPORATION,
GRACE PETROLEUM CORP., and
GELSENBERG AG,

Defendants.

Plaintiffs Nelson Bunker Hunt, W. Herbert Hunt and Lamar Hunt, by their attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, allege:

### JURISDICTION AND VENUE

1. Plaintiffs bring this action to recover threefold the damages sustained by them as a result of their being
injured in their business and property by reason of defendants'
violations of the federal antitrust laws, and more particularly,
of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 73
of the Wilson Tariff Act, 15 U.S.C. § 8. In addition, plaintiffs
seek to recover damages arising out of defendants' breaches of
contract. Jurisdiction is conferred on this Court by Sections 4,
12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26; by

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Section 74 of the Wilson Tariff Act, 15 U.S.C. § 9; by 28 U.S.C. § 1337; by 28 U.S.C. 1332; and by the doctrine of pendent jurisdiction.

2. Defendants reside, inhabit, can be found, do business, or transact business in the Southern District of New York. Venue in this District is proper under §§ 2 and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22; under 28 U.S.C. § 1391; and under § 77 of the Wilson Tariff Act, Aug. 27, 1894, Ch. 349, 28 Stat. 570.

#### THE PARTIES

3. Plaintiffs Nelson Bunker Hunt, W. Herbert Hunt and Lamar Hunt are citizens and residents of the United States and of the State of Texas. Their principal place of business is 1401 Elm Street, Dallas, Texas 75202. Plaintiffs have been in the business of exploring for, producing and selling crude oil in Libya and elsewhere. Plaintiffs owned undivided interests in their Libyan enterprise and did business as individuals under the name of Nelson Bunker Hunt. Hereinafter plaintiffs collectively will be referred to as Hunt, plaintiff or plaintiff Hunt.

#### 4. Defendants are:

- (a) Mobil Oil Corporation (hereinafter "Mobil"),
  a New York corporation with its principal place of business at
  150 East 42nd Street, New York, New York 10017;
- (b) Texaco Incorporated (hereinafter "Texaco"), a Delaware corporation with its principal place of business at 135 Fast 52nd Street, New York, New York 10022;

(c) Standard Oil Company of California (hereinafter "SoCal"), a Delaware corporation with its principal place of business at 225 Bush Street, San Francisco, California 94104; (d) The British Petroleum Company Limited (hereinafter "BP"), a United Kingdom corporation with its principal place of business at Britannic House, Moor Lane, London, England; (e) Shell Petroleum Company Ltd. (hereinafter "Shell"), a United Kingdom corporation with its principal place of business at Shell Centre, London S.E. 1, England; (f) Exxon Corporation (hereinafter "Exxon"), a New Jersey corporation with its principal place of business at 1251 Avenue of the Americas, New York, New York 10017; (g) Gulf Oil Corporation (hereinafter "Gulf"), a Pennsylvania corporation with its principal place of business at the Gulf Building, Pittsburgh, Pennsylvania 15230; (h) Occidental Petroleum Corporation (hereinafter "Occidental"), a California corporation with its principal place of business at 10889 Wilshire Boulevard, Los Angeles, California 90024; (i) Grace Petroleum Corp. (hereinafter "Grace"), a Delaware corporation with its principal place of business at Grace Plaza, 1114 Avenue of the Americas, New York, New York 10036; and (j) Gelsenberg AG (hereinafter "Gelsenberg"), a West Germany corporation with its principal place of business at Rosastrasse 2, Essen 4300, West Germany.

## TRADE AND COMMERCE

- 5. Defendants do business in, and comprise a substantial part of the international petroleum industry. This industry involves several levels of operation, including: the exploration for and production of crude oil, the transportation of crude oil, the refining of crude oil, the transportation of refined petroleum products, and the marketing of refined petroleum products.
- 6. Defendants Mobil, Exxon, Shell, Texaco, SoCal, BP and Gulf (hereinafter the "seven majors") are vertically integrated companies operating in the United States and internationally at every one of these five levels. They each explore for and produce crude oil in the United States and elsewhere, and each has United States and worldwide facilities for transporting and refining crude oil. They each market refined petroleum products in the United States and elsewhere through dealers associated or affiliated with or owned by them.
- (a) In the United States the seven majors own 48 percent of the Nation's proved crude oil reserves, 40 per cent of crude oil production, and 44 per cent of refining capacity, and they account for 44 per cent of gasoline sales.
- (b) Internationally, the seven majors, together with an eighth and much smaller company, Compagnie Française des Petroles (hereinafter "CFP"), account for 80 per cent of world trade in crude oil.
- (c) The bulk of the seven majors' non-domestic crude oil production is in the Persian Gulf area -- in Saudi

Arabia, Iran, Iraq, Kuwait, the Neutral Zone, Abu Dhabi, Qatar, Dubai and Oman. In 1972, for example, the seven majors produced over 13 million barrels per day in these countries.

- (d) The majors' production in Libya, on the other hand, was and is much less significant -- less than one-tenth as much crude oil as in the Persian Gulf. Defendant Gulf has had no Libyan production.
- (e) The seven majors reported revenues and net income for 1974 as follows:

		Revenues	Net Income
Exxon	-	\$45.84 billion	\$3.10 billion
Shell	-	32.00 "	2.70 "
Texaco	-	23.99 "	1.59 "
Mobil	-	20.37 "	1.04
SoCal	-	18.80 "	0.97
Gulf	_	18.20 "	1.07 "
BP		18.00 "	1.80 "

- 7. Defendants Occidental and Gelsenberg are large diversified companies which produce crude oil in Libya and elsewhere, and refine, transport and market crude oil and other petroleum products.
- 8. Defendant Grace is a large diversified company which produces crude oil in Libya.
- 9. Plaintiff Hunt is a non-integrated oil producer who operates only at the exploration and production levels.

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He has never had facilities to transport or refine crude oil, or to transport or market refined petroleum products. Unlike the defendants, who refine all or most of their own crude oil production, Hunt sells all of his oil production in the socalled "third party" market; buyers in that market include the seven majors. Libya has been his only source of crude oil.

- 16. Since Libya began producing crude oil for export in 1961. its role in the world crude oil trade has been small but significant.
- (a) Compared to the Persian Gulf countries, Libya's proven reserves of crude oil are small. In 1971, they were only 30 billion barrels. Proven reserves in the Persian Gulf countries exceeded 350 billion barrels and were and are increasing at a rapid rate.
- (b) Compared to Persian Gulf oil, Libyan oil is light (and therefore high in valuable gasoline distillates), very low in sulphur (an undesirable pollutant removable only at considerable expense), and geographically close to West European and American markets.
- (c) Two-thirds of Libya's oil production by 1971 was controlled by companies other than the seven majors.
- (d) Libya by 1971 accounted for over 25 per cent of oil sales to Western Europe, a market previously dominated by Persian Gulf crude oil.
  - 11. Over one-third of the United States' crude oil

and other petroleum needs of 16 million barrels a day are imported. In 1971, approximately 100,000 barrels a day were imported directly from Libya.

### THE FACTUAL BACKGROUND

- seven majors dominated world trade in crude oil. They controlled Persian Gulf production through a series of multicompany consortiums. Some 85 per cent of such production was marketed on an intra-company transfer basis. Price bore no relationship to the cost of extraction; the cost of extracting crude oil in the Persian Gulf was as little as six cents a barrel. while the price at which it was marketed ranged between \$1.40 and \$2.50 a barrel.
- Persian Gulf crude oil worked substantially as follows: The majors would announce "posted" prices which, in the 1950s, reflected actual market prices (freight on board at export terminals). During the 1950s and 1960s, an excess of supply and the majors' desire to displace other energy sources caused market prices to decline. But posted prices did not change. By 1960, posted prices had become fictitious, merely a reference point for the purpose of determining royalties and taxes.

  "Profits," computed by deducting the cost of production from the posted price, were taxed at a 50 per cent rate by the host countries, with royalties being first credited and later expensed against the tax due.

14. When Libyan crude oil production started in 1961 and non-major companies -- including non-integrated companies who would put all their crude oil into the market place began to acquire control of substantial production, the ability of the seven majors to administer production and world market price, and thereby to maximize and manipulate profits, was put in jeopardy.

determined by reference to market price rather than the higher posted price, contrary to the practice in the Persian Gulf.

Because market prices were lower than posted prices, this reduced the "tax paid cost" of Libyan oil. When the non-majors began sharply to expand their share of Libyan production, those of the seven majors with production in Libya induced the government in 1965 to abandon the use of market price as the tax reference, and to substitute posted price. Exxon drafted the new tax law for the government. The purpose and effect was to eliminate any cost advantage enjoyed by the non-majors' fast-increasing Libyan production over the majors' Persian Gulf production.

rights from the Libyan government to explore for, produce and sell crude oil. In September 1960, with the approval of the Libyan government, Hunt assigned an undivided one-half interest in his concession to defendant BP. Oil reserves estimated at 11 billion barrels were discovered on the Hunt-BP concession at Sarir Field in November 1961, ranking it among the world's half dozen largest fields. Hunt and BP spent \$250 million

developing production at Sarir. They drilled 89 wells, laid a 320 mile pipeline, constructed a terminal at Marsa al Hariga/Tobruk and built a gas condensate recovering plant. Production began at Sarir in January 1967 and reached a level of 450,000 barrels per day.

- 17. In September 1969, Colonel Moamer Qaddafi assumed power in Libya under the government known as the Revolutionary Command Council ("RCC"). It was the oft-stated intent of Colonel Qaddafi and the RCC to increase the price of Libyan oil, increase Libya's share (the "government take") of the price, increase Libya's control over production and ultimately increase Libya's equity participation in the oil reserves and production facilities in that country. Thereafter, the RCC made continual demands upon individual Libyan oil producers, particularly Hunt and other non-major producers, relating first to price and government take, and then to control of production and equity participation. These demands were often accompanied by threats of cutbacks in production, embargos and nationalization. Sharp production cutbacks were actually imposed, usually in the name of "conservation." Agreements resulted, first with Occidental, which was rewarded with cancellation of prior production cutbacks, and then with all other Libyan producers. The 1970 agreements increased the posted price of Libyan crude oil by 30 cents and the tax rate applied to the posted price from 50 to 54-58 per cent.
  - 18. These Libyan agreements prompted similar demands by other oil-producing countries, and led the Organization of Petroleum Exporting Countries ("OPEC") and OPEC's Persian Gulf

member states to demand increases in their posted prices and government take, and, later, control over production and equity participation. OPEC's demands were officially formulated in a series of resolutions promulgated in Caracas, Venezuela, on December 9-12, 1970. Negotiations between the Persian Gulf countries and companies producing oil in the Gulf area, principally the seven majors, to implement the new demands were scheduled for Teheran in January of 1971.

- despite the recently concluded "agreements" with the oil producers, Libya demanded new increases in the posted price for Libyan oil and in the tax rate, plus required "reinvestment" in Libya by producers at the rate of 25 cents per barrel. The RCC moved first against Hunt and Occidental, giving each until January 16, 1971 to accept these allegedly "non-negotiable" demands.
- mands, top executives of the seven majors met secretly in New York City to concert their response to the demands of Libya, OPEC and the Persian Gulf members of OPEC. One purpose of this concerted action, from which producers like Hunt were excluded, was to present a united front to the oil-producing countries and thereby strengthen the seven majors' bargaining position. The seven majors also feared continual escalation of demands by the oil-producing countries they feared a 'leap frogging' where, if an agreement were reached with one producing country, another would attempt to obtain terms equally or more favorable.

Since the Libyan government were making the most extreme demands at this time, the seven majors were particularly concerned that any agreement between a significant Libyan producer and the Libyan government would escalate the Persian Gulf countries! demands and thus burden the seven majors' much more extensive Persian Gulf holdings. At these January 1971 meetings in New York City, the seven majors agreed among themselves that they would negotiate only as a group with the oil-producing countries, and only with the countries as a group.

- belatedly invited on January 9 to join the New York meeting.
  The Antitrust Division of the United States Department of
  Justice had insisted upon their inclusion as a condition of its
  stating that it had no present intention to bring an enforcement
  action against certain specified actions of the seven majors.

  Another purpose of the seven majors in admitting Hunt and the
  other Libyan producers to the meeting was to try to prevent any
  of them from accepting the terms laid down by Libya, which terms
  might set an undesirable precedent for the Persian Gulf where
  the seven majors had their principal interests, or otherwise
  conflict with the interests of the seven majors.
  - sentatives of Hunt and the other non-major Libyan producers met in New York City with the seven majors. All agreed on the desirability of industry-wide negotiations with Libya and the other OPEC countries. A joint statement to that effect to be addressed to OPEC was agreed upon. It was also agreed that there should be some form of equitable risk-sharing. A draft agreement to achieve this purpose was prepared by counsel to the major oil companies. Hunt's representatives strenuously

objected to key features of the proposed agreement. In some instances, Hunt's pleas for firm contractual protections were met with informal assurances about the other parties' "intentions." But most of Hunt's objections were rejected.

Nevertheless, for a variety of reasons, Hunt signed the agreement: because of the January 16 deadline imposed by the RCC, the belief that industry-wide and OPEC-wide negotiations were preferable to unilateral negotiations with the RCC and would obviate the necessity for implementation of the risk-sharing provisions, a misplaced confidence in the good faith and expressed intentions of the other parties, and fear that he would be boycotted if he refused to sign (all of his customers were among the other signatories).

- 23. The agreement, dated January 15, 1971 and styled the Libyan Producers' Agreement (Exhibit A hereto) provides, in relevant part:
  - "1. Until December 31, 1973, each of the parties declares its intention not to make any agreement or offer of agreement with the Libyan Government with respect to 'government take' as applied to crude oil without the assent of the other parties hereto; it is furthermore the intention of the parties that they will endeavor, before making any agreement with the Libyan Government, to include a requirement that the Libyan Government accept an offer on comparable terms . . . from all other concessionaires;
  - "2. If after January 8, 1971, the Libyan production of any party or parties is cut back as a result of Libyan Government action below the average daily level prevailing in December 1970, all of the parties will share such cutback or cutbacks during the period thereof but not beyond December 31, 1973 . . .

\* \* \*

"3. During any sharing program under paragraph 2 or a total shutdown of the parties' production in Libya, those of the parties with Persian Gulf production in excess of 150,000 barrels per day (the 'Persian Gulf Producing Parties') shall further be obligated to supply Middle East crude at cost, f.o.b. Persian Gulf loading ports to the parties other than the Persian Gulf Producing Parties . . . to meet commitments to pre-existing European and Western Hemisphere customers or renewals thereof. . . .

"5. If prior to December 31, 1973 a party makes an offer of an agreement or makes an agreement with the Libyan Government of the kind described in paragraph 1, without the assent of the other parties, it shall thereupon cease to be entitled to any of the benefits, but shall not be relieved of the obligations provided in paragraphs 2 and 3."

Section 4 of the agreement provides that, in certain circumstances, a party obligated to supply Persian Gulf crude could opt to substitute cash.

Agreement, and generally to concert efforts to stabilize and coordinate the relative tax-paid cost, price and other terms of crude oil production in Libya and the Persian Gulf, the seven majors continued in existence and supplemented an intricate system of multi-company organizations which they controlled and dominated. These organizations included the London Policy Group ("LPG"), the London Administrative Group ("LAG"), the New York Group ("NYG"), the Libyan Operators Group ("LOG"), and various legal and technical subcommittees of these groups, including the Libyan Emergency Supply Subcommittee ("LESSCOM"). Chief executives and other high officials of the seven majors continued to meet in New York and elsewhere to discuss and coordinate policy with respect to the tax-paid costs,

prices and other terms of trade of Libyan and Persian Gulf crude oil.

- 25. Upon obtaining the signatures of Hunt and the other non-major producers to the Libyan Producers' Agreement, the seven majors immediately abandoned the agreed-upon "global" approach to negotiations. They decided among themselves that negotiations with Libya and the Persian Gulf countries should be separately conducted, and that the Teheran negotiations with the Persian Gulf countries should proceed forthwith. separation deprived Hunt of the major benefit he thought he had obtained in return for signing an otherwise unsatisfactory agreement, while burdening him with the Agreement's market, customer and other restrictions -- for while the majors had a role in Libyan negotiations, he had none in Persian Gulf negotiations. The separation provided the seven majors both an incentive and a mechanism to delay Libyan agreement and enabled them to reach agreement on tax-paid costs, prices and other terms of trade with the Persian Gulf countries more favorable to the majors than the terms of any Libyan agreement. The effect was to protect tax-paid costs, prices and other terms of trade in the Persian Gulf where the majors' production and reserves were centered, and to make less competitive the crude oil of Libya, where Hunt had all of his production and reserves.
- 26. On February 14, 1971 the Teheran negotiations produced an agreement between the seven majors and the Persian Gulf countries that promised five years of oil price stability and also contained a number of terms disadvantageous to the Libyan oil producers in general and to Hunt in particular.

23. In thus violating their pledges, the seven majors obtained a measure of insulation from Libyan practice and precedent for their principal interests in the Persian Gulf. Libya on the other hand, was encouraged to use the terms negotiated in the Persian Gulf as the starting point for its new demands.

agreement with Libya after several months of negotiations in which the defendants pursued objectives hostile to the interests of Hunt. Libya obtained an increase in its take of 65 cents per barrel, thereby leap-frogging the Persian Gulf countries. The majors were willing to accept these increases in this relatively unimportant producing area so long as the increases could be characterized as "fluctuating freight differentials" — the majors had previously won agreement from the Persian Gulf countries not to treat such differentials as precedents for Gulf prices. Other non-major Libyan producers, short of crude for their own refineries, were less concerned about the non-competitiveness of Libyan oil in the "third-party" markets where Hunt alone sold all of his production.

- 29. By September 1971, both Libya and the OPEC countries began asserting new demands, this time seeking equity participation and protection against the dollar devaluation of the prior month.
- majors and the other Libyan oil producers again met in New York.

  On October 18, 1971 the parties to the Libyan Producers' Agreement executed a Memorandum of Intent and a Memorandum of Confirmation (Exhibits B and C hereto). These written agreements purported to reaffirm the January 15 commitment

collectively to consider the demands of the oil producing states. The parties agreed that any demands or actions by Libya relating to governmental equity participation in Libya holdings were within the scope of the January 15 agreement. They agreed also that any offer or agreement with Libya on the subject of equity participation must receive the prior consent of all parties, and that any party entering into such an agreement must attempt to secure equivalent terms for the other countries.

- 31. In keeping with prior practice, the majors immediately reneged on this October 18 commitment to collective action; they proceeded to deal with the parity and equity participation questions separate and apart from the other Libyan producers. The seven majors met secretly to coordinate their positions, and their own team of negotiators dealt with the Persian Gulf countries.
- 32. On December 7, 1971 Libya nationalized BP's half of the Sarir Field, and demanded that Hunt market BP's share of the Sarir production, for Libya's account.
- and of the other Libyan producers met in New York City on
  December 13, 1971 to discuss the problem of nationalization.

  BP and the other majors insisted that Hunt refuse to market
  BP's oil. In order to induce Hunt to resist the Libyan demand,
  all parties to the Libyan Producers' Agreement signed a further
  Memorandum of Confirmation (attached hereto as Exhibit D) in
  which they agreed that a total or partial nationalization by
  Libya of any party's property was within the scope of the Agreement and "that any demand or action by the Libyan government
  relating to any such nationalization which attempts to or does
  in fact impose restrictions, obligations, or duties on any other
  party hereto is within the purview of said agreement."

34. Hunt, in response to urgent requests and in reliance upon the assurances of BP, the other majors, and the other parties to the Libyan Producers' Agreement, did refuse to market BP's oil for Libya's account. As a result, Hunt personnel were evicted from Sarir early in 1972 and his permissible oil production cut back by 50 per cent.

- 35. Thereafter, BP and Hunt began receiving crude oil from the other parties to the Libyan Producers' Agreement.
- 36. In October 1972, the Libyan government demanded an immediate 50 per cent equity participation in Hunt's interests in Sarir.
- 37. The seven majors feared that Hunt's acquiescence in Libya's demands would adversely affect or upset their own so-called "Yamani" negotiations in the Persian Gulf, the terms of which they had kept secret from Hunt. Unknown to Hunt, the proposed Persian Gulf terms were milder than those sought against Hunt by Libya, and were to be matched by corresponding increases in production ceilings (a response not feasible in Libya), thereby making implementation virtually costless to the seven majors. To prevent an untimely Libyan agreement, the chief executives of the majors met with Hunt and the other Libyan producers in New York City on November 20, 1972. The majors proposed changes in the Libyan Producers' Agreement to induce Hunt and the other Libyan producers to resist the new demands as long as possible. But they rejected Hunt's now reiterated demand that the pre-existing customer restriction, which gave such customers an unfair bargaining advantage, be deleted. On November 21, 1972, the parties to the January 15,

1971 Agreement signed a Supplement thereto (Exhibit E hereto), extending the Agreement on a somewhat modified basis through 1974.

- 38. Hunt thereupon rejected the Libyan demands. The Libyan government responded with further demands and proposals regarding equity participation. At the insistence of the majors and the other producers, who included all of his then customers, Hunt once again rejected the Libyan demands and did not reach an agreement with the Libyan government on equity participation.
- 39. On December 11, 1972, the seven majors met to coordinate their strategy with respect to equity participation in Libya. Hunt was not invited to attend, nor was he apprised of what was decided upon.
- 40. Also on December 11, 1972, as a result of Hunt's refusal to market the BP oil expropriated by Libya and his refusal to accept the equity participation demands of the Libyan government, the Libyan government refused to permit further export of Hunt's oil. This embargo lasted for about three weeks, until Hunt commenced international arbitration proceedings against Libya.
- 41. On May 24, 1973, Hunt was informed that Libya had terminated his right to produce and export cruce oil. On June 11, 1973, all of his assets were formally nationalized.
- 42. The quality of the oil supplied Hunt under the Libyan Producers' Agreement had gradually deteriorated, as the defendants and other parties substituted Arabian and Kuwait heavy crude in place of the light oil called for under the

agreement. When oil prices rose in 1973, all defendants except Exxon ceased to provide oil at all, a step taken by Mobil as early as the fall of 1972. No defendant has complied fully with its contractual obligation to supply Hunt with oil.

- he did receive under the Agreement well below market because the Agreement, over his objections, had restricted Hunt's sales of Persian Gulf crude oil to pre-existing Western Hemisphere and European customers. Since he only had three such customers, and each was a party to the Agreement, they exploited the restriction and refused to take oil from Hunt except at a distress price.
- 44. Through the end of 1974, the defendants named herein delivered to Hunt under the Agreement approximately 13,346,000 barrels of Libyan oil and 35,750,000 barrels of customer-restricted Persian Gulf oil. They have withheld at least another 90 million barrels of crude oil, although each knew that the necessary consequence of this failure to perform was elimination of Hunt from the world crude oil trade.
- ationalized, defendants Mobil, Occidental, Grace and Gelsenberg quickly reached agreements with Libya on equity participation terms which they had insisted that Hunt reject. Contrary to their obligations under the Libyan Producers' Agreement, they did not seek or receive Hunt's consent to these agreements. And no defendant has sought to obtain terms for Hunt comparable to those offered it by Libya.

#### FIRST CLAIM

- 46. Plaintiff Hunt realleges each allegation contained in paragraphs 1 through 45.
- 47. Since at least January 1970 and continuing to the date of the filing of this complaint, all defendants, along with co-conspirators named and not named, have, in this District and elsewhere, engaged in a combination and/or conspiracy in unreasonable restraint of the trade and commerce of the United States with foreign nations in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 73 of the Wilson Tariff Act, 15 U.S.C. § 8.
- 48. This was no new development, because for many years, beginning no later than 1946, the seven majors have conspired among themselves and with others to regulate production, administer price, divide markets and allocate customers.
- 49. In furtherance of this objective, the seven majors have conducted their principal crude oil production, particularly in the Persian Gulf area, through a series of multi-company consortiums and inter-company exchange agreements, through which they have been able to regulate production, administer prices, divide markets and allocate customers.
- 50. When other persons began to produce and market Libyan crude oil in increasing quantities after 1961, the seven majors took steps to eliminate certain competitive advantages enjoyed by these other companies and otherwise

JA 29

restrain their ability to compete. The means used included but were not limited to:

- (a) Manipulation of the tax laws of Libya so as to increase tax-paid costs, and thereby prices;
- (b) Negotiation and administration of the Libyan Producers' Agreement so as to disadvantage Libyan oil relative to Persian Gulf oil; and
- (c) Erection of barriers to keep producers like Hunt out of markets dominated by the seven majors or away from customers serviced by the majors.
- 51. Among the means utilized by the seven majors was their insistence that Hunt surrender his right to sell Persian Gulf crude oil supplied under the Libyan Producers' Agreement to anyone other than pre-existing Western Hemisphere and European customers. The seven majors and the other defendants insisted upon adhering to the customer restriction even when Hunt complained it was being used unfairly in price negotiations over the restricted oil.
- 52. The pre-existing-customer clause in the Libyan Producers' Agreement was and is an unlawful agreement among competitors to allocate customers and territorially to divide markets.
- 53. This unlawful agreement affected the flow of crude oil and refined petroleum products into the United States, the price of crude oil and refined petroleum products in the United States and abroad, as well as the profits to

30 be derived from interstate and foreign commerce by American companies. 54. By joining the Libyan Producers' Agreement and assisting the seven majors to enforce the pre-existing customer clause, the other Libyan producers named as defendants became co-conspirators with the seven majors, and parties to an unlawful contract and combination in restraint of trade. 55. By reason of the unlawful conduct herein

- complained of, plaintiff Hunt has been and will continue to be injured in his business and property.
- (a) The pre-existing-customer clause limited the Persian Gulf crude oil to which Hunt was entitled under the Libyan Producers' Agreement to that which he could sell to his then pre-existing European and Western Hemisphere customers;
- (b) At the time of the Agreement and throughout its term, Hunt had only three such customers, all of whom were parties to the Agreement, two -- Exxon and Shell -- being among the seven majors;
- (c) Hunt was the only party to the Agreement without refining capacity of his own and with no pre-existing Western Hemisphere or European customer outside the Agreement;
- (d) Hunt was, therefore, the only party to the Agreement whose benefits thereunder were wholly at the mercy of his fellow signatories;
- (e) Because Hunt had no other source of crude oil after his shut-in, he was precluded from seeking new customers or entering new markets, where normal profits could have been obtained;

- (f) Knowing that Hunt could sell Persian Gulf crude oil only to them, defendants Exxon and Shell and the third customer refused to pay market price for the oil, compelling Hunt to sell such oil at distress prices;
- (g) For each of the approximately 35,750,000 barrels of Persian Gulf crude oil provided Hunt under the Libyan Producers' Agreement between July 1, 1972 and August 31, 1974, Hunt was denied the profit of from 50 cents to \$2 a barrel that he would otherwise have earned and that was earned by all other beneficiaries under the Agreement, and was compelled to accept a profit of between 13 and 20 cents a barrel.

### SECOND CLAIM

- 56. Plaintiff Hunt realleges each allegation contained in paragraphs 1 through 45.
- 57. Since at least 1970, the defendants named herein, along with co-conspirators named and not named, have, in this District and elsewhere, engaged in a combination and/or conspiracy in unreasonable restraint of the foreign trade and commerce of the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and of Section 73 of the Wilson Tariff Act, 15 U.S.C. § 8.
- 58. As part of the unlawful conduct complained of, the defendants have agreed to act in concert to refuse to supply Hunt with the crude oil to which he was entitled under the Libyan Producers' Agreement, as amended and supplemented,

32 JA and they have agreed to engage in concerted action to boycott Hunt and to deprive him of the crude oil needed to fulfill his contracts with purchasers of crude oil, thereby causing him to lose his existing contracts, any opportunities for renewal, and access to new customers and markets. 59. This concerted refusal to deal and group boycott have had the following effects, among others: (a) The defendants have withheld from Hunt at least 90 million barrels of oil lawfully due him; (b) Hunt has been eliminated as a source of crude oil in the world crude oil trade; (c) Crude oil purchasers in the United States and elsewhere have been denied access to Hunt's oil and the competition for their business previously provided by Hunt. 60. By reason of this concerted refusal to deal and group boycott, Hunt has been and will continue to be injured in his business and property. He has sustained damages, the full extent of which cannot presently be calculated, but which include: (a) A loss of at least \$90 million, consisting of lost profits on the sale of the 90 million barrels of crude oil improperly withheld from him; (b) Still further losses from being eliminated as a source of crude oil in the world crude oil trade.

### THIRD CLAIM

- 61. Plaintiff Hunt realleges each and every allegation contained in paragraphs 1 through 45.
- 62. Since at least 1970, the seven majors along with co-conspirators named and not named, have engaged in a combination and/or conspiracy in unreasonable restraint of the foreign trade and commerce of the United States, in violation of the Sherman Act, 15 U.S.C. § 1, and of Section 73 of the Wilson Tariff Act, 17 U.S.C. § 8.
- the seven majors have combined and conspired among themselves to preserve the competitive advantage of Persian Gulf crude oil relative to that of Libyan crude oil, and to diminish competition from Libyan crude oil producers. To these ends they have combined and conspired to prevent plaintiff Hunt and other Libyan producers from reaching any agreement with the Libyan government inconsistent with that competitive advantage, even where they knew that the necessary and foreseeable consequence of their conduct would be Hunt's elimination as a Libyan crude oil producer.
- and conspiracy, the seven majors entered into written agreements with Hunt and other Libyan producers, manipulated the course of Libyan negotiations so as to advance their own interests in the Persian Gulf, and followed a course of action that led to Hunt's nationalization and elimination from the production of Libyan crude oil.

65. By reason of this unlawful combination and conspiracy, Hunt has been and will continue to be injured in his business and property. He has sustained damages, the full extent of which cannot presently be calculated, but which include lost profits on his half interest in the 11 billion barrels of crude oil contained in the Sarir Field.

### FOURTH CLAIM

- 66. Plaintiff Hunt realleges each allegation contained in paragraphs 1 through 45.
- 67. The defendants have, despite Hunt's demand, failed to perform their obligations under the Libyan Producers' Agreement of January 15, 1971, as amended and supplemented by the agreements of October 18, 1971, December 16, 1971, and November 21, 1972, by
- (a) Failing to supply Hunt with at least, 90 million barrels of Libyan and/or Persian Gulf crude oil of proper grade and quality due to him; and
- (b) Entering into agreements with the Libyan government or making proposals to that government regarding their own holdings in Libya without seeking or obtaining Hunt's consent, and without attempting to obtain comparable terms for Hunt.
- 68. Throughout the terms of these agreements,
  Hunt has duly performed all the conditions and duties required
  of him by the agreements.

their obligations under the agreements, Hunt has suffered damages of at least \$90 million when he did not receive the crude oil owed him when it was due, and of additional amounts when he was denied the promised assistance of all defendants in obtaining terms from the Libyin government comparable to those octained by them. Finally, as a result of their breaches, he has lost his expectation of future profits from his interest in the Sarir Field.

### PRAYER FOR RELIEF

WHEREFORE, plaintiff Hunt hereby demands judgment against defendants as follows:

- 1. As to the First, Second and Third Claims:
- (a) That the Court adjudge and decree that the defendants have engaged in unlawful combinations, conspiracies and agreements in unreasonable restraint of trade, in violation of Section 1 of the Sherman Act and Section 73 of the Wilson Tariff Act;
- (b) That the defendants, their successors, assignees and transferees, their respective officers, directors, agents and employees, and all persons acting or claiming to act on behalf thereof or in concert therewith, be permanently enjoined from in any manner, directly or indirectly, continuing, maintaining or renewing the combinations, conspiracies, and agreements alleged in these counts,

or from engaging in any combination and conspiracy having a similar purpose or effect, or from adopting or following any practice, plan or program having a similar purpose or effect.

- (c) That plaintiff recover such damages, trebled pursuant to Section 4 of the Clayton Act and Section 79 of the Wilson Tariff Act, as he has sustained. Such damages are not presently calculable, except that one component of these damages (lost profits on the 90 million barrels of crude oil improperly withheld from him) totals no less than \$90 million before trebling, and that another component (lost profits on some 35,750,000 barrels of Persian Gulf oil delivered to him subject to a customer restriction) totals in excess of \$35 million before trebling; and
- (d) That plaintiff be awarded reasonable attorneys' fees, all costs and disbursements incurred in this action, and such other and further relief as this Court may deem just and proper.

### 2. As to the Fourth Claim:

- (a) That this Court adjudge and decree that the defendants named herein have failed to comply with their obligations under the aforementioned agreements;
- (b) That this Court award damages for breaches of contract in an amount not presently calculable, but in no event less than \$90 million;

(c) That plaintiff be awarded costs, and such other and further relief as this Court may deem just and proper.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

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Alexandria, Virginia 22313
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January 9, 1976

Exhibit A Annexed to Amended Complaint Libyan Producers' Agreement Dated January 15, 1971

(Pages JA39 to JA45)

### EXHIBIT A

Recent events in petroleum exporting countries have raised serious questions as to the stability of oil supply at reasonable cost and as to the contractual arrangements under which such supply is assured. Such stability has been recognized by the governments of the United States and other oil consuming nations as vital to their mutual security. These recent events include unilateral demands for changes in agreed arrangements and concerted action on the part of exporting countries in support of such unilateral demands, including threatened interruptions of supply. In these circumstances, individual companies find themselves unable to conduct meaningful negotiations.

Each party recognizes and affirms that it is entering this agreement of its own free will and pursuant to its own individual judgment as to its own best interests.

Each party recognizes that if it should stand firm in refusing the demands of the Libyan Government, it might suffer serious financial consequences which would not be fully alleviated by the limited mutual self-help provisions of this agreement.

Nevertheless, each party agrees that in view of the substantial benefits expected to be derived by it from this agreement, it is prepared to participate berein.

In light of these most serious circumstances it is agreed as follows:

1. Until December 31, 1973, each of the parties declares its intention not to make any agreement or offer of agreement with the Libyan Government with respect to "government take" as applied to crude oil without the assent of the other parties hereto; it is furthermore the intention of the parties that they will endeavor, before making any agreement with the Libyan Government, to include a requirement that the Libyan Government accept an offer on comparable terms, adjusted for basic differences in applicable agreements as they now stand, from all other concessionaires; provided, however, that nothing contained in this paragraph 1 shall obligate any company to take or refrain from taking any action if to do so would, in its opinion, be contrary to its vital interests.

- 2. If after January 8, 1971, the Libyan production of any party or parties is cut back as a result of Libyan Government action below the average daily level prevailing in December 1970, all of the parties will share such cutback or cutbacks during the period thereof but not beyond December 31, 1973, in accordance with the following:
  - (a) Except as provided in paragraph 2(e), 3 and 4 below, an obligation of a party shall be limited to the supply of Libyan crude oil from its Libyan production at cost f.o.b. Libyan port.
  - (b) During 1971, 100% of such cutback or cutbacks then in effect shall be shared on a basis proportionate to the respective shares of the parties of total Libyan production in the last full calendar month preceding the effective date of the first cutback after January 8, 1971.
  - (c) During 1972, 80% of such cutback or cutbacks then in effect shall be shared in each calendar quarter on a basis proportionate to the respective shares of the parties of total Libyan production in the next preceding calendar quarter, provided that for this purpose a party shall be deemed to have produced the amount of any cutback applied to it.
  - (d) During 1973, 60% of such cutback or cutbacks then in effect shall be shared in each calendar quarter on a basis proportionate to the respective shares of the parties of total Libyan production in the next preceding calendar quarter, provided that for this purpose a party shall be deemed to have produced the amount of any cutback applied to it.
  - (e) If a party has Libyan crude production and has an obligation to supply Libyan crude to another party or parties under this paragraph, but the supplier is prevented from supplying Libyan crude to such party or parties because of Libyan Government restrictions, the supplier shall be obligated, unless restrictions by other governments intervene, to supply, on a barrel-for-barrel basis, Persian Gulf crude selected by the supplier at cost f.o.b source for delivery to the pre-existing European and Western Hemisphere customer commitments

and renewals thereof of the party or parties cutback with freight at AFRA Large Range 2 applicable to the monthly period in which delivery is made equalized between such source and the Libyan port; provided that the supplier shall have the option to provide in substitution for freight equalization the actual transportation needed to move such Persian Gulf crude from its supply source to the pre-existing European or Western Hemisphere customer, less that required to move Libyan crude to such pre-existing customer.

- 3. During any sharing program under paragraph 2 or a total shutdown of the parties' production in Libya, those of the parties with Persian Gulf production in excess of 150,000 barrels per day (the "Persian Gulf Producing Parties") shall further be obligated to supply Middle East crude at cost, f.o.b. Persian Gulf loading ports to the parties other than the Persian Gulf Producing Parties ("Non-Persian Gulf Producing Parties") to meet commitments to pre-existing European and Western Hemisphere customers or renewals thereof in amounts equal to the difference between any party's Libyan production in the last full calendar month preceding the effective date of the first cutback after January 8, 1971 and its Libyan crude availability after all adjustments under paragraph 2; provided that such total obligation of the Persian Gulf Producing Parties shall be subject to a maximum in 1971 of 1,500,000 barrels per day, in 1972 of 1,125,000 barrels per day, and in 1973 of 750,000 barrels per day, in each case less the number of barrels of crude oil supplied by the Persian Gulf Producing Parties to the Non-Persian Gulf Producing Parties in such year pursuant to paragraph 2.
- 4. In respect of each barrel of Persian Gulf crude oil a party is obligated to supply but has not supplied under paragraph 2(e) or 3:
  - (a) Such party shall have the option to elect to pay 10 cents; provided if such option is elected it shall apply pro rata as to every party to whom such Persian Gulf Producing Party has such an obligation;
  - (b) Such party shall have the obligation to pay said 10 cents if it is prevented from delivering such barrels by

an act of the Government having jurisdiction and in each case such payment shall constitute a full and complete discharge of such party's obligations under such paragraph. Without in any way modifying, limiting or conditioning its legal right to exercise the option set forth above in paragraph 4(a), and it being expressly understood that the exercise of such option shall give rise to no claim other than that for payment of the amounts due under paragraph 4(a), each of the Persian Gulf Producing Parties states that its present intention is to supply Persian Gulf crude oil in discharge of its obligations under paragraphs 2(e) and 3.

- 5. If prior to December 31. 1973 a party makes an offer of an agreement or makes an agreement with the Libyan Government of the kind described in paragraph 1, without the assent of the other parties, it shall thereupon cease to be entitled to any of the benefits, but shall not be relieved of the obligations provided in paragraphs 2 and 3.
- 6. All obligations assumed hereunder shall be subject to force majeure except to the extent provided specifically to the contrary herein. Force majeure includes without limitation acts of God and acts of Sovereigns.
- 7. The Persian Gulf Producing Parties shall share the obligations defined in paragraph 3 on a basis to be agreed upon by them.
- 8. (a) "Cost" means tax-paid cost adjusted for retroactivity, if any.
  - (b) "Cutback" as to any party shall mean a reduction in production resulting from Libyan Government action for whatever reason and shall mean the sum of I and III or II and III:
    - I. In 1971 such party's average daily production in December, 1970 less the amount of such party's actual average daily production as permitted by the Libyan Government;
    - II. In 1972 and 1973, the lesser of--
      - (i) Such party's average daily production in December, 1970 less the amount of such party's

- actual average daily production as permitted by the Libyan Government in the quarter for which the cutback is being determined; and
- (ii) Such party's average daily production in the quarter preceding the quarter in which such party's cutback or cutbacks then in effect were first applied less the amount of such party's actual average daily production as permitted by the Libyan Government in the quarter for which the cutback is being determined.
- III. Production of such party voluntarily shut in by such party where such production has become uneconomic because of cutbacks required by the Libyan Government.
- (c) "Production" means crude oil exportable by the producer.
- 9. (a) Each party hereto covenants that it will not assert any claim against any other party or parties arising out of this agreement, except claims for non-performance of this agreement.
  - (b) Each party hereto waives any claim to the recovery of consequential damages for breach of this agreement.
  - (c) Each party agrees that the maximum damages recoverable by any party claiming non-performance of an obligation to deliver Libyan crude oil under paragraph 2 hereof shall be 25 U.S. cents times the number of barrels of Libyan crude oil which such party claims it was entitled but failed to receive hereunder.
  - (d) Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.
- 10. This agreement consists of the fatire agreement of the parties; there are no oral promises, representations or warranties.
- 11. (a) This agreement shall come into effect when both of the following have occurred:

- (i) Signature by BP, Gulf, Jersey, Mobil, Shell, Socal and Texaco.
- (ii) Advice has been received by the parties hereto from John J. McCloy that he has advised the State Department of this agreement and they have interposed no objection and have expressed support in principle and, further, that he has advised the Department of Justice of this agreement and it has stated in writing that it has no present intention of instituting any proceeding under the antitrust laws with respect to the making or performance of this agreement.
- (b) The parties hereto undertake to use best efforts promptly to notify each person or company now holding Libyan Petroleum Concessions of the opportunity to accede to this agreement as provided hereinafter. Accession to to this agreement shall be open to any other person or company which holds a Libyan Petroleum Concession until the earlier of January 30, 1971 or the date immediately prior to the date on which such company enters into or continues discussion with the Libyan Government after January 15, 1971 regarding the matters described in paragraph 1.
- 12. The parties hereto, except The British Petroleum Limited, Gelsenberg, A.G., Shell Petroleum Company, Ltd., and Shell Petroleum Maatschappij, agree to make such reports concerning the matters covered by this agreement as the Attorney General or the Secretary of State of the United States may request.
- 13. Any other provision to the contrary notwithstanding, this agreement shall terminate (a) upon receipt of advice from the Attorney General of the United States that the agreement in operation adversely affects the domestic or foreign commerce of the United States, or (b) upon receipt of advice from the Secretary of State and the Attorney General of the United States that circumstances have so changed that such agreement is no longer in the public interest. Provided that as to any party whose Libyan concession or property has been expropriated as a direct result of action taken by such party pursuant to this agreement, the obliga-

tions nevertheless of all other parties to such party as provided herein shall continue until the three year period provided for herein shall have expired, unless the Secretary of State and Attorney General shall otherwise determine.

This agreement may be executed by the person or corporation holding a Libyan Petroleum Concession and/or by a parent, direct or indirect, of such corporation. In the latter event such parent undertakes to cause the Libyan Petroleum Concession holder in which it has an interest to perform this agreement and to take all action necessary to carry out the terms thereof.

January 15, 1971

Amerada Petroleum Corp. of Libia

By: A. T. Jacobson

Atlantic Richfield Company

By: J. A. Simmons

The British Petroleum Co. Ltd.

By: D. F. C. Steel

Continental Oil Co.

By: John E. Kircher

Gelsenberg A.G.

By: Schlbert

Grace Petroleum Corp.

By: E. L. Farrell, Jr.

Gulf Oil Corporation

By: A. R. Martin

Marathon Oil Company

By: J. R. Donnell

Nelson Bunker Hunt

By: Nelson Bunker Hunt

Mobil Oil Corporation

By: H. C. Moses

Occidental Petroleum Co.

By: William Bellano

Shell Petroleum Co. Ltd. &

Shell Petroleum Maatschappij

By: Brian A. Carlisle

Standard Oil Co. of Calif.

By: Mac L. Packhurst

Standard Oil Co. (N.J.)

By: Charles J. Hedlund

Texaco Inc.

By: A. C. Delrane, Jr.

Ву: -

Exhibit B Annexed to Amended Complaint Memorandum of Intent Dated October 18, 1971

(Pages JA47 to JA49)

### Ехнівіт "В"

### MEMORANDUM OF INTENT

- 1. Recently concluded agreements between various petroleum exporting companies and petroleum producing companies operating within their borders were intended to establish and assure security of crude supply and stability of financial arrangements for a period of 5 years. These agreements resulted from negotiations carried on jointly by the companies with the governments within the contemplation of the document entitled "Message to OPEC" dated 16 January 1971. Notwithstanding these agreements, the same petroleum exporting countries are again jointly making demands for changes in existing arrangements with the oil companies and threatening concerted action unless negotiations satisfactorily achieve the government's objectives.
- 2. The current demands, broadly stated in OPEC Resolutions XXV-139 and 140, include the securing of effective government participation in existing oil concessions and the upward adjustment of oil revenues of the producing country governments to offset any alleged "adverse effect on the per barrel real income of member countries resulting from the international monetary developments as of 15th August 1971."
- 3. In this connection, the Iranian Consortium Member Companies have been informed by Dr. Amount gar that he and Ministers Yamani and Hammadi have been appointed to negotiate implementation of Resolution 139 on behalf of the same six Persian Gulf states that were parties to the Teheran Agreement of 15 February 1971. The Consortium Members have also been advised by Dr. Amouzegar that he and Minister Atigi have been asked to negotiate implementation of Resolution 140 on behalf of the same six states. Furthermore, the Libyan Minister of Petroleum on 26 September 1971 issued instructions on currency exchange to all concession holders which instructions are contrary to existing agreements between the concession holders and the government and which if not resisted will have the effect of achieving by unilateral action substantially the objective of Resolution 140.
- 4. In view of these demands and the threatened concert of government action in furtherance thereof, the oil companies find

themselves once again, as in January 1971, unable on an individual basis to formulate and maintain effective negotiating positions and to conduct meaningful negotiations on these most serious issues. Hence, again, as in January 1971, they declare that they wish to consider collectively the responses to be made to the government's demands and courses of action to be followed either individually or jointly during the conduct of negotiations to be carried on by the companies (a) individually with one or more of the governments concerned or (b) by designated negotiators on behalf of some or all of the undersigned companies with one or more of the governments concerned, depending on circumstances.

- 5. In furtherance of the foregoing, the parties recommend that they either individually or collectively as appropriate make coordinated responses and take coordinated action with reference to the governments' demands or actions associated with or related to the subject matters dealt with in OPEC Resolutions XXV-139 and 140, including the Circular Letter of the Libyan Ministry of Petroleum issued on or about 26 September 1971.
- 6. It is understood that nothing contained in this memorandum shall obligate any party to take or refrain from taking any action with reference to the government demands referred to above.
- 7. This Memorandum of Intent shall come into effect when the parties hereto and the parties to a Memorandum of Confirmation of even date have been advised by John J. McCloy, Esq. that he has informed the Department of Justice of both this Memorandum of Intent and said Memorandum of Confirmation and it has stated in writing that it has no present intention to take any action under the antitrust laws with respect to the making of either of said Memorandum or the activities contemplated therein.
- 8. The parties hereto, except the British Petroleum Company, Limited, Gelsenberg A.G., Hispanica de Petroleos S.A. (Hispanoil), Arabian Oil Company, Shell Petroleum Company, Ltd. and Shell Petroleum Maatschappij, agree to make such reports of activities

pursuant to this Memorandum of Intent as the Department of Justice may request.

October 18, 1971

Ву: ----

By: \_\_\_\_\_\_\_ By: \_\_\_\_\_

Exhibit C Annexed to Amended Complaint

Memorandum of Confirmation Dated October 18, 1971

(Page JA51)

### EXHIBIT "C"

# MEMORANDUM OF CONFIRMATION

- 1. The undersigned confirm their intent and understanding that any demands of or actions by the Libyan Government associated with or related to the subject matters dealt with in OPEC Resolutions XXV-139 and 140 (including but not limited to the Ministry of Petroleum's Circular Letter issued on or about September 26, 1971) are within the purview of the Libyan Producers' Agreement dated January 15, 1971, and particularly paragraph 1 thereof.
- 2. The confirmation herein contained shall come into effect when the parties hereto and the parties to a Memorandum of Intent of even date have been advised by John J. McCloy, Esq. that he has informed the Department of Justice of both this Memorandum of Confirmation and said Memorandum of Intent and it has stated in writing that it has no present intention to take any action under the antitrust laws with respect to the making of either of said Memoranda or the activities contemplated therein.

 October 18, 1971

 By:
 By:

 By:
 By:

 By:
 By:

# Exhibit D Annexed to Amended Complaint Further Memorandum of Confirmation Dated December 16, 1971

(Pages JA53 to JA54)

### EXHIBIT "D"

### Further Memorandum of Confirmation

- 1. The undersigned parties to the Memorandum of Confirmation dated October 18, 1971, confirm their intent and understanding that the total or partial nationalization of the properties of any party hereto by the Libyan Government in contravention or breach of the applicable provisions of the Petroleum Law or the terms of any of the concession agreements of such party (including the action by the Libyan Government by decree dated 7 December 1971 with respect to the properties of BP Exploration Company (Libya) Limited in Concession 65) is within the purview of the Libyan Producers Agreement dated January 15, 1971, as confirmed by such Memorandum of Confirmation and that any demand or action by the Libyan Government relating to any such nationalization which attempts to or does in fact impose restrictions, obligations or duties on any other party hereto is within the purview of said agreement as so confirmed.
- 2. The undersigned parties to the Memorandum of Intent dated October 18, 1971, hereby confirm their intent and understanding that the subject matters provided in paragraph 1 hereof are included within the scope and provisions of such Memorandum of Intent.
- 3. The confirmations herein contained shall come into effect when the parties hereto have been advised by John J. McCloy, Esq. that he has informed the Department of Justice of this Further Memorandum of Confirmation and it has stated in writing that it has no present intention to take any action under the antitrust laws with respect to the making of this Further Memorandum or the activities contemplated therein.

December 16, 1971

Parties to the Memorandum of Confirmation dated October 18, 1971	Parties to the Memorandum of Intent dated October 18, 1971
Murphy Oil Corporation By: Illegible	By:
Mobil Oil Corporation By: William E. Lindenmuth	Mobil Oil Corporation By: William E. Lindenmuth
Standard Oil Co. (N.J.) By: Charles J. Hedlund	Standard Oil Co. (N.J.) By: Charles J. Hedlund
Texaco Inc. By: L. W. Folmar	Texaco Inc. By: L. W. Folmar

(Forward) (Forward) Parties to the Memorandum of Parties to the Memorandum of Confirmation dated October 18, Intent dated October 18, 1971 1971 The British Petroleum Corp. The British Petroleum Co. By: Illegible By: Illegible Amerada Petroleum Corp. of Lybia Amerada Petroleum Corp. of Lybia By: A. T. Jacobson By: A. T. Jacobson Marathon Oil Co. Marathon Oil Co. By: Illegible By: Illegible Standard Oil Company of Calif. Standard Oil Company of Calif. By: W. Jones McQuin By: W. Jones McQuin Occidental Petroleum Corp. Occidental Petroleum Corp. By: Illegible By: Illegible Gulf Oil Corp. Gulf Oil Corp. By: H. E. Hansen By: H. E. Hansen American Independent Oil Corp. By: \_\_\_\_ By: Illegible Grace Petroleum Corp. Grace Petroleum Corp. By: Illegible By: Illegible Gelsenberg A.G. Gelsenberg A.G. By: Illegible By: Illegible Signal (Iran) Petroleum Company By: Russell B. Newton, Jr. By: -Atlantic Richfield Co. Atlantic Richfield Co. By: Illegible By: Illegible Continental Oil Co. Continental Oil Co. By: Illegible By: Illegible Illegible By: Illegible By: ---Shell Petroleum Company Ltd. & Shell Petroleum Company Ltd. & Shell Petroleum Maatschappij Shell Petroleum Maatschappij By: Illegible By: Illegible Nelson Bunker Hunt Nelson Bunker Hunt By: Illegible By: Illegible

Arabian Oil Company, Ltd.

By: Illegible

Exhibit E Annexed to Amended Complaint
Supplement to Libyan Producers' Agreement
Dated November 21, 1972

(Pages JA56 to JA58)

# SUPPLEMENT TO LIBYAN PRODUCERS' AGREEMENT OF JANUARY 15, 1971

In view of the demand for participation outlined in OPEC Resolution XXV-139 and the threat of concerted Government action in support of that demand, the parties to the January 15, 1971 Libyan Producers' Agreement signed a Memorandum of Confirmation October 18, 1971 affirming that the participation issue is covered by the Libyan Producers' Agreement ("the Agreement"). Negotiations with respect to Libyan Government participation have not been concluded and are expected to continue for a longer period than was contemplated. In view thereof, the parties hereto have agreed, and by the execution of this instrument ("this Supplement") do hereby agree, to extend the Agreement for one additional year, i.e. for the calendar year 1974, on the basis set forth below:

- 1. The parties hereto shall share a cutback with respect to 1974
  - (A) only to the extent that the cutback results from Libyan Government action taken after the effective date of this Supplement in response to a party resisting the demands and actions of the Libyan Government in respect of participation on a basis consistent with terms assented to by the parties; and
  - (B) only to the extent that the cutback represents production lost on those whole days in 1974 on which the party claiming such cutback was completely shut-in.
- 2. The volume of a party's cutback with respect to any calendar quarter of 1974 which qualifies under paragraph 1 above shall be calculated by multiplying the number of whole days such party was completely shut-in during the quarter by such party's average daily production for the month of October 1972.

Such calculated volume shall be shared during 1974 to the same extent and on the same basis applicable under the provisions of the Agreement to the sharing of cutbacks with respect to 1973.

3. Each Non-Persian Gulf Producing Party shall be entitled to Middle East crude with respect to any calendar quarter of 1974 to meet commitments to pre-existing European and Western Hemisphere customers on the basis of the application of the provisions in paragraph 3 of the Agreement which are applicable to 1973, subject to the following:

- (A) if such party's Libyan production is completely shut-in as a result of the type of Libyan Government action described in item 1(A) above for one or more days during such quarter of 1974, then such party's production level to be used for the purpose of calculating maximum Middle East crude entitlement shall continue to be that party's average daily production for the month of November 1971, or
- (B) if the Middle East crude is claimed in replacement of Libyan crude supplied by a party under a sharing program pursuant to paragraphs 1 and 2 above, then such party's Middle East crude entitlement shall be equal to the net number of barrels of Libyan crude so supplied.

The provisions of paragraph 3 of the Agreement in respect of the maximum obligation to supply Persian Gulf crude in 1973 shall also be applicable in 1974.

- 4. Effective 1 January 1974 in respect of Middle East crude entitlement determined under paragraph 3 above, it is agreed that "15 cents" shall be substituted for "10 cents" wherever such number and word appear in paragraphs 4(a) and 4(b) of the Agreement; and it is further agreed that except for such substitution the rights of any Persian Gulf Producer under paragraph 4 of the Agreement shall not be modified, limited, conditioned or prejudiced by this Supplement.
- 5. It is understood that nothing contained in this Supplement shall obligate any party to take or refrain from taking any action with reference to the Libyan Government's demand for participation if to do so would, in its opinion, be contrary to its vital interests; provided however, that even if a party by taking or refraining to take any action forfeits any of the benefits to which it would otherwise be entitled, it shall not be relieved of any obligations hereunder.
- 6. The Agreement shall continue in force and effect unchanged through December 31, 1973, and, as modified herein, shall continue in effect through December 31, 1974 among the parties hereto.

This Supplement shall be deemed to have come into effect on November 21, 1972 among the signatory parties when John J. McCloy advises the parties hereto that the State Department and the Department of Justice have been informed of this Supplement and have interposed no objection.

IN WITNESS WHEREOF, the parties have signed this Supplement this 21st day of November, 1972.

By: Illegible
Amerada Petroleum Corp. of Libya By: Illegible
Gulf Oil Corporation By: L. A. Turner
Marathon Oil Co. By: Illegible
Occidental Petroleum Corp. By: John V. Clarke
The Shell Petroleum Co. Ltd. By: Illegible
Ву:
By:
Ву:

## Notice of Motions and Motions of Certain Defendants to Dismiss Complaint

(Pages JA60 to JA66)

### United States District Court

SOUTHERN DISTRICT OF NEW YORK

75 Civ. 1160 EW

NELSON BUNKER HUNT,

Plaintiff,

-against-

MOBIL OIL CORPORATION, TEXACO, INC., STANDARD OIL COMPANY OF CALIFORNIA, THE BRITISH PETROLEUM COMPANY, LTD., SHELL PETROLEUM COMPANY, LTD., EXXON CORPORATION, GULF OIL CORPORATION, OCCIDENTAL PETROLEUM CORPORATION, GRACE PETROLEUM CORPORATION, AND GELSENBERG AG,

Defendants.

#### NOTICE OF MOTIONS

TO: Jay H. Topkis, Esq.
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Anthony M. Radice, Esq.
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& Garrison
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Philip Hirschkop & Associates, Ltd. P.O. Box 1226 Alexandria, Virginia 22313

Attorneys for Plaintiff

PLEASE TAKE NOTICE that on Tuesday, June 3, 1975, at 2:15 p.m., or as soon thereafter as counsel may be heard, the undersigned defendants shall bring on for hearing in Room 706 before the Honorable Edward Weinfeld in the United States Court House at New York, New York, the attached Motions To Dismiss Complaint pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure and the Alternative Motion For Stay Of The Fourth Claim Pending Arbitration pursuant to Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3.

In connection with these motions, the undersigned defendants rely upon the complaint filed herein with the attached Libyan Pro-

ducers' Agreement and related amendments and supplements (set forth in the Appendix filed herewith), as well as upon the supporting memorandum filed herewith.

### Respectfully submitted,

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Attorneys for Defendant Grace Petroleum Corporation

By /s/ Richard H. Zahm
RICHARD H. ZAHM

May 15, 1975

# United States District Court

SOUTHERN DISTRICT OF NEW YORK

75 Civ. 1160 EW

NELSON BUNKER HUNT,

Plaintiff,

-against-

MOBIL OIL CORPORATION, TEXACO, INC., STANDARD OIL COMPANY OF CALIFORNIA, THE BRITISH PETROLEUM COMPANY, LTD., SHELL PETROLEUM COMPANY, LTD., EXXON CORPORATION, GULF OIL CORPORATION, OCCIDENTAL PETROLEUM CORPORATION, GRACE PETROLEUM CORPORATION, AND GELSENBERG AG,

Defendants.

# MOTIONS OF CERTAIN DEFENDANTS TO DISMISS COMPAINT AND ALTERNATIVE MOTION FOR STAY OF THE FOURTH CLAIM PENDING ARBITRATION

The undersigned defendants hereby make the following motions to dismiss the several claims of the complaint herein pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure:

I. Motion to Dismiss the antitrust claims in the First, Second and Third Claims for failure to state claims upon which relief may be granted and for lack of subject matter jurisdiction, on the following grounds:

(1) Plaintiff was not within the target area of the alleged acts of the defendants;

(2) The necessary and direct causal connection between the alleged acts of defendants and the alleged injury to the plaintiff is lacking;

(3) Plaintiff cannot recover where the alleged injury, as here, is caused by the actions of a foreign government acting in its sovereign capacity;

(4) The collective activities of the defendants were undertaken to respond to actions by the Libyan government and other oil producing countries in the Persian Gulf and, therefore, are not within the scope of the antitrust laws; and furthermore such activities of defendants were undertaken with the approval of the State Department of the United States and without objection from the Department of Justice which was fully advised;

- (5) Plaintiff is not entitled to recover under the antitrust laws for alleged acts of defendants which, at most, constitute alleged breaches of an agreement to which plaintiff was a party and from which plaintiff has benefitted substantially;
- (6) Conclusory statements that the defendants conspired—without specific allegations of supporting facts—do not state a cause of action under the Sherman Act;

In addition as to the First Claim:

- (7) The pre-existing customer clause challenged in the First Claim is an arrangement ancillary to the Libyan Producers' Agreement and reasonably related to its lawful objective which implemented the risk-sharing arrangement for the benefit of plaintiff and others and, as such, does not constitute an unlawful allocation of customers or division of territories prohibited by the antitrust laws;
- (8) The First Claim fails to allege that defendants engaged in any concerted action to require plaintiff to sell crude oil at "distress prices";

In addition as to the Second Claim:

(9) The defendants' alleged failure to supply plaintiff with crude oil as charged in the Second Claim is, at best, a question of the possible breach of the Libyan Producers' Agreement which expressly fixes the maximum damages for failure to furnish oil, and under settled law such a claim does not constitute an illegal red refusal to deal cognizable under the antitrust laws; and

in addition as to the Third Claim:

- (10) The nationalization and consequent loss of plaintiff's concession in Libya alleged in the Third Claim is admitted to have resulted directly from plaintiff's own conduct and actions by the Libyan government and not from conduct of the defendants.
- II. Motion to Dismiss or Strike (or for the entry of a partial summary judgment) the claim for actual damages in the Fourth Claim of the complaint on the ground that the amount of damages, if any, recoverable for the alleged breach of the Libyan Producers' Agreement is determined and limited by (a) the liquidated damages provision in paragraph 9(c) of the Agreement with respect to any obligation to supply Libyan oil; and (b) by the option provision in paragraph 4 of the Agreement providing for the payment of a

per barrel sum of cash in lieu of oil with respect to any obligation to supply Persian Gulf oil; and all that remains to be adjudicated, either by the Court or by arbitration, is the number of barrels of oil, if any, plaintiff was entitled to receive but did not receive under the Agreement.

In the alternative, defendants move the Court, pursuant to Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3, for an order staying all proceedings under the Fourth Claim pending arbitration of the breach of contract alleged therein, in accordance with the terms of paragraph 9(d) of the Libyan Producers' Agreement expressly providing for the arbitration of any controversy or claim arising out of or relating to the Agreement or any breach thereof.

In connection with these motions, the undersigned defendants rely upon the complaint filed herein with the attached Libyan Producers' Agreement and related amendments and supplements (set forth in the Appendix filed herewith), as well as upon the supporting memorandum filed herewith.

Respectfully submitted,

Of Counsel:

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Attorneys for Defendant Grace Petroleum poration

By /s/ Richard H. Zahm
RICHARD H. ZAHM

Opinion of Weinfeld, D.J., Dated November 5, 1975

(Pages JA68 to JA109)

EDWARD WEINFELD, D. J.

Certain defendants (Mobil Oil Corporation,

Texaco, Inc., Standard Oil Company of California, The

British Petroleum Company, Ltd., Exxon Corporation, Gulf

Oil Corporation, Occidental Petroleum Corporation, Grace

Petroleum Corporation), excepting only defendants Shell
(1)

Petroleum Company, Ltd. and Gelsenberg AG, move to dismiss the first, second and third claims of the complaint,

encompassing all of plaintiff's antitrust charges, for lack

of subject matter jurisdiction and for failure to state

claims upon which relief can be granted, pursuant to Rule
(2)

12 (b) (1) and (6) of the Federal Rules of Civil Procedure.

<sup>(1)</sup> The defendant Gelsenberg AG moved to dismiss the complaint for lack of in personam jurisdiction and for lack of proper service of process, which motion was denied.

<sup>(2)</sup> The precise basis for the claim of lack of subject matter jurisdiction is not altogether clearly articulated by the defendants. Upon argument of the motion, counsel for defendants stated that both branches of the instant motion would be treated the same, to wit, as "failure to state a claim." In any event, the defendants' challenge for lack of subject matter jurisdiction is without substance. As the Court of Appeals indicated recently, in Brault v. Town of Milton, Docket No. 74-2370 (2d Cir., Aug. 22, 1975), "[s]ince plaintiff [has] drawn [his] complaint so as to seek recovery under the . . . laws of the United States, this court has jurisdiction to hear the case, even if the complaint ultimately fails to state a claim." In Baker v. Carr, 369 U.S. 186, 199 (1962), the Supreme Court held that

The defendants also move to dismiss the fourth claim,
which alleges a breach of contract, or for partial summary
judgment thereon; alternatively, they seek an order pursu(3)
ant to section 3 of the Federal Arbitration Act staying
all proceedings under the fourth claim pending arbitration
thereof.

At the outset a preliminary observation is in order. The defendants' motion to dismiss is based solely upon the alleged deficiencies of plaintiff's complaint, to which is attached an agreement of the parties and related amendments and supplements. The movants, however, in somewhat discursive fashion, have directed part of heir argument to the merits of plaintiff's claims. This makes it necessary to state, what ordinarily is accepted as hornbook

footnote 2 cont'd.

such a suit may be dismissed for want of jurisdiction of the subject matter only if the alleged claim under the federal statute is "'so attenuated and unsubstantial as to be absolutely devoid of merit' . . . or 'frivolous.' . . . The plaintiff's complaint here does not fall within this narrow exception to the rule, originating in Bell v. Hood, 327 U.S. 678, 682 (1946), that "[j]urisdiction . . is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover."

<sup>(3) 9</sup> U.S.C. § 3.

law, that the merits of the claims set forth in the complaint are not at issue; that the allegations of the complaint are assumed to be true for the purposes of this

(4)

motion; further, that a complaint should not be dismissed unless "it a pears beyond doubt that the plaintiff

can prove no set of facts in support of his claim which

(5)

would entitle him to relief."

#### THE ANTITRUST CLAIMS

Plaintiff Hunt, who was engaged in oil production in Libya under a government concession, alleges three claims of violation of the antitrust laws by the defendants. In broad outline, he charges that prior to and in the course of cooperative efforts by plaintiff and defendants to deal with increasingly aggressive oil producing countries, defendants combined and conspired in violation of section 1 (6) of the Sherman Act and section 73 of the Wilson Tariff

<sup>(4)</sup> California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 515-16 (1972); Walker Process Equip., Inc. v. Food Mach. & Chem. Corp., 382 U.S. 172, 174-75 (1965).

<sup>(5)</sup> Conley v. Gibson, 355 U.S. 41, 45-46 (1957), reaff'd, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). See also Prudential Ins. Co. of America v. Insurance Agents' Int'l Union (AFL-CIO), 169 F. Supp. 534, 536 (S.D.N.Y. 1959).

<sup>(6) 15</sup> U.S.C. § 1. This section reads as follows: "Every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

claim 1: to impose unlawful customer and market restrictions upon him by insisting he enter into an agreement, thereafter enforced, which limited the resale of Persian Gulf oil supplied to him by defendants only to his preexisting Western Hemisphere and European customers.

Claim 2: to group boycott plaintiff by collectively refusing to deliver to him some ninety million barrels of oil rightfully due him under that agreement.

claim 3: to use the agreement between the parties, as amended and extended, and their consequent control over the course of Libyan negotiations, to promote certain defendants' Persian Gulf interests at the expense of plaintiff and, ultimately, to destroy plaintiff by preventing him from reaching any agreement with the Libyan government, which course of action led to plaintiff's nationalization and elimination from competition as a producer of Libyan oil.

<sup>&</sup>quot;Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce..."

Such concerted misuse of the parties' agreement was allegedly the continuance of an already existing conspiracy
(8)
on the part of the defendant seven major oil companies
to eliminate plaintiff and other Libyan independents as
competitors.

Preliminary to a detailed consideration of the defendants' challenge to these claims, a brief reference is desirable to the extended factual background against which the claims are alleged. The plaintiff's charges center about oil production in two areas, Libya and the Persian Gulf. Libya and the other oil producing countries are members of the Organization of Petroleum Exporting Countries ("OPEC"). The seven majors are vertically inte(9)
grated. Six of the seven produce oil in both areas,
but the Persian Gulf fields are far more significant to them since this area contains ten times the oil in Libya.
Plaintiff was a non-integrated independent producer who

<sup>(8)</sup> Mobil Oil Corporation, Exxon Corporation, Shell Petroleum Company, Ltd., Texaco, Inc., Standard Oil Company of California, The British Petroleum Company, Ltd. and Gulf Oil Corporation.

<sup>(9)</sup> Their functions include the exploration for and production of crude oil, the refining of crude oil, the transportation of crude oil and of refined petroleum products, and the marketing of refined petroleum products.

Other independent producers of oil in Libya were Occidental
Petroleum Corporation, Gelsenberg AG, a West German corporation, and Grace Petroleum Corporation, also named herein as
defendants.

Plaintiff alleges that as production of oil in
Libya by him and other independents increased substantially,
the domination by the seven majors of world trade in crude
oil was threatened, and that as the non-majors expanded
their share of Libyan production, attempts were made as
early as 1965 by one or more majors to eliminate cost advantages enjoyed by the non-majors' fast increasing Libyan
production over the majors' Persian Gulf production.

In late 1969 Libya threateningly demanded changes in existing agreements with oil companies operating in Libya which increased the government's share or "take" in these companies' profits from such oil production. Libya's success in enforcing such terms in its 1970 agreements with all Libyan producers prompted the Persian Gulf countries to make similar demands on the companies operating in their territories. Following formulation of these Persian Gulf

demands in December 1970, Libya, early in January 1971,

despite recently concluded agreements, demanded new price

and tax increases, particularly from plaintiff Hunt and

from defendant Occidental, and gave them until January 16,

1971 to accept thes "non-negotiable demands." Fearing a

continuation of this pattern of escalating demands by Libya

and then by Persian Gulf countries ("leapfrogging," as the

parties term it), executives of the seven majors met secret
ly in January 1971 to concert their response to the latest

demands of Libya, OPEC and the Persian Gulf members of OPEC.

Originally, the seven majors did not include plaintiff or any of the other Libyan independents in their conferences or plans to present a united front in resisting the demands of the oil producing countries, although their immediate concern was the prospect of escalation of Persian Gulf countries' demands if either Hunt or Occidental agreed to Libya's new terms. The seven majors sought a clearance letter from the Department of Justice, but the Department insisted upon the inclusion of the independent Libyan oil producers as a condition of stating it had no present intention to bring an enforcement proceeding under the antitrust laws by reason of the contemplated concert of action

son he and the other independents were belatedly invited to participate in the sessions. Plaintiff further alleges that another purpose of the seven majors in admitting Hunt and the other Libyan producers to their meetings was to obtain control over them in order to prevent any of them from accepting any terms laid down by Libya which might set an undesirable precedent for negotiations with the Persian Gulf countries, where the seven majors had their principal interest, or from otherwise acting in conflict with the interests of the seven majors.

resolved to present a united front in dealing with Libya and the other OPEC countries and despite his objections to some of the key features of the proposed agreement, he acquiesced based upon assurances by the parties that they would support him by supplying him with oil if his own supply were cut off by Libya. In any event, plaintiff and the defendants reached an agreement on January 15, 1971, referred to as the Libyan Producers' Agreement (the "Agreement"), which is at the core of this litigation.

The clear purpose of the Agreement, acknowledged by all the parties, was to deal collectively with the demands of Libya and the other oil producing countries. Each party to the Agreement declared his or its intention not to make any agreement or offer of agreement with the Libyan government with respect to the "government take" of crude oil without the consent of the other parties, and to endeavor before making any agreement with the Libyan government to include a requirement that the Libyan government deal with the other concessionaires on comparable terms.

A principal feature of the Agreement was its "sharing" provision. In general, the Agreement provided that if a party's crude oil production in Libya was cut back as a result of government action, all other parties would share in such cut back as provided in the Agreement. And if there was insufficient Libyan oil to meet the contractual obligations due to restrictions or shut down by the Libyan government, those parties with Persian Gulf production would supply the Libyan producers who were cut

<sup>(10)</sup> However, ¶ 1 of the Agreement provides: "[N]othing . . . shall obligate any company to take or refrain from taking any action if to do so would, in its opinion, be contrary to its vital interests."

back with Persian Gulf oil at cost. However, this obligation was limited to supply such Persian Gulf oil only to meet commitments to preexisting European and Western (11)

Hemisphere customers. Plaintiff Hunt had three such customers at that time, all of whom were signatories to the Agreement, and two of whom were among the seven majors (Exxon and Shell).

Plaintiff alleges that despite his objections
to certain aspects of the Agreement, particularly to the
preexisting customer and market restriction clause, he
signed the Agreement for a number of reasons: the pressure
of the January 16 deadline set by Libya for response to its
latest "non-negotiable" demands; the fact that industrywide and OFEC-wide negotiations were preferable to individual
negotiations with Libya; a misplaced confidence in the good
faith and expressed intention of the other parties, and the
(12)
fear that he would be boycotted if he refused to sign.

<sup>(11)</sup> This preexisting customer provision did not apply to any Libyan oil supplied to a producer who had been cut back.

<sup>(12)</sup> Plaintiff's consent to and participation in the Agreement of which he now complains does not prevent him from seeking the protection of the antitrust laws since the Supreme Court has held that "the doctrine of in pari

### THE FIRST ANTITRUST CLAIM

## (a) The preexisting customer provision

ants, horizontal competitors of each other and of Hunt, violated the antitrust laws by the provision of the Agreement that imposed upon him a restriction against the resale of Persian Gulf oil to any other than a preexisting European or Western Hemisphere customer, with the purpose and intended effect of foreclosing him from competing with defendants for new customers or in new markets. He further charges that he was the only party to the Agreement without refining capacity of his own, which the parties knew; that he had only three eligible or preexisting customers, all of whom were parties to the Agreement; that the effect of confining him to those customers was not only to foreclose him from seeking new customers wherever located, but also to enable the three to deal with him free from competitive forces

footnote 12 cont'd

delicto . . . is not to be recognized as a defense to an antitrust action." Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 140 (1968).

See also Trebuhs Realty v. News Syndicate Co., 107

F. Supp. 595, 599-601 (S.D.N.Y. 1952).

and thus to extract from him wholly uncompetitive prices.

Plaintiff contends that as a result of these acts and

conduct of the defendants he sustained a loss of many

millions of dollars.

On its face plaintiff's charge that the customer and market restrictions contained in the Agreement constituted a per se violation of the Sherman Act and the Wilson Tariff Act appears to be of substance under the Supreme (13)Court decisions in United States v. Arnold, Schwinn & Co. and United States v. Topco Associates, Inc. plaintiff's position is that no matter how well intentioned and whatever the defendants' motivation in seeking to protect themselves against the ever increasing demands of the oil producing countries, the provision of the Agreement which restricted plaintiff to preexisting customers and geographical territories, in effect, a regulation of customers to whom and where he could sell crude oil, constituted a per se violation which forecloses application of the rule of reason.

<sup>(13) 388</sup> U.S. 365, 382 (1967).

<sup>(14) 405</sup> U.S. 596, 607-11 (1972).

<sup>(15)</sup> Cf. United States v. Topco Associates, Inc., 405 U.S. 596, 607-11 (1972).

However, the defendants challenge the very foundation of this antitrust claim by raising the threshold question of whether the agreement to provide Persian Gulf oil to the parties whose supply was cut off by Libya was truly an agreement for the sale and purchase of oil, or whether it was in effect an insurance or risk allocation mechanism which by its very nature did not entail a restraint of trade subject to the antitrust laws. Among other matters, they argue that the preexisting customer clause under which oil was supplied to plaintiff was not an agreement to buy or sell, but rather "a sharing in the loss arrangement," of special benefit to plaintiff, since he was one of the most vulnerable of the parties to attack by Libya. Accordingly, defendants contend that the preexisting customer clause attached to the oil supply provision is beyond the proscription of the Sherman Act. Whatever the force of this contention, it goes to the merits of the parties' respective positions. Thus the issue is not one to be decided on a motion to dismiss, since its resolution requires an interpretation of the contract and the circumstances surrounding its execution.

<sup>(16)</sup> Pekar v. Local Union No. 181 of the International Union of United Brewery, Flour, Cereal, Soft Drink and

A matter of significance which would have to

be considered is the so-called option to the Persian Gulf

suppliers to pay cash in lieu of supplying oil. Under

this provision, upon its face, the Persian Gulf producers

who were "obligated to supply but [have] not supplied"

such oil were permitted to pay cash to those Libyan pro
(17)

ducers whose supply had been cut off. However, as

the court noted at the argument of the motion to dismiss,

this option provision "is rather clear except for one item

(18)

at the end," which reads: "[E]ach of the Persian Gulf

Producers Parties states its present intention is to supply

Persian Gulf crude oil in discharge of its obligations under

paragraphs 2 (e) and 3." When questioned upon argument as to

footnote 16 cont'd

Distillery Workers of America, AFL-CIO, 311 F.2d 628, 636 (6th Cir. 1962); Machen v. Johansson, 174 F. Supp. 522, 527 (S.D.N.Y. 1959); Farrand Optical Co. v. United States, 107 F. Supp. 93, 96 (S.D.N.Y. 1952).

<sup>(17)</sup> Paragraph 4 of the Agreement provides in pertinent part: "In respect of each barrel of Persian Gulf crude oil a party is obligated to supply but has not supplied under paragraph 2 (e) or 3:

<sup>(</sup>a) Such party shall have the option to elect to pay 10 cents; provided if such option is elected it shall apply pro rata as to every party to whom such Persian Gulf Producing Party has such an obligation."

<sup>(18)</sup> Transcript of hearing, July 15, 1975, p. 79.

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the meaning of that provision of the contract, counsel

for the movants replied that it "has no meaning except

an expression of intention which they [the Persian Gulf

suppliers] were free to ignore at any time." Presumably

(19)

its inclusion had some purpose; otherwise if the Persian

Gulf producers had "no present intention . . . to supply

Persian Gulf crude oil in discharge" of their obligations,

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a substantial question of fraud may come into play.

The plaintiff, in the light of this and other provisions and circumstances surrounding the making of the Agreement, disputes defendants' position that the parties intended the option to pay cash to be a complete alternative, unlimited in scope or duration, to supplying oil. Apart from these contentions, plaintiff points to to the fact that the supply clause also provides that the exercise of the option must apply pro rata to every party

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<sup>(19)</sup> National Equip. Rental Ltd. v. Reagin, 338 F.2d 759, 762-63 (2d Cir. 1964). See also Hanley v. James McHugh Const. Co., 444 F.2d 1006, 1009 (7th Cir. 1971); United States v. N.A. Degerstrom, Inc., 408 F.2d 1130, 1133 (9th Cir. 1969).

<sup>(20)</sup> Deyo v. Hudson, 225 N.Y. 602, 611-12 (1919); Adams v. Gillig, 199 N.Y. 314, 319-22 (1910). See also Schenley Distillers Corp. v. Renken, 34 F. Supp. 678, 680-82 (E.D.S.C. 1940); Terris v. Cumminskey, 11 A.D.2d 259, 261 (3d Dep't 1960); Sabo v. Delman, 3 N.Y.2d 155, 160 (1957).

supplied oil to one obligee, they were without power to enforce a cash option provision against another obligee.

Moreover, the payment of cash instead of supplying oil could, in the instance of the plaintiff, whose supply of Libyan oil was completely cut off, effectively eliminate him as a competitor in the crude oil market. Thus, the defendants' contention that the plaintiff's first claim is beyond the reach of the antitrust laws involves questions of fact which cannot be resolved on a motion to dismiss for failure to state a claim.

The defendants, assuming arguendo that the Agreement at issue is covered by the Sherman Act, make a further attack upon plaintiff's first claim (as well as his other antitrust claims) upon a variety of grounds.

### (b) The "target area" argument.

Preliminarily, defendants urge that plaintiff

lacks standing to raise any of his antitrust claims because

<sup>(21)</sup> Wolman v. Tose, 467 F.2d 29, 35 (4th Cir. 1972); Wilshire Oil Co. of Texas v. Riffe, 409 F.2d 1277, 1284 (10th Cir. 1969); Zell Ins. Agency, Inc. v. Guaranty Security Ins. Co., 399 F.2d 147, 148-49 (5th Cir. 1968); Dobson v. Masonite Corp., 359 F.2d 921, 923-24 (5th Cir. 1966).

v. The Coca-Cola Company, "allege a causative link to his injury which is 'direct' rather than 'incidental' or which indicates that his business or property was in the 'target area' of the defendant's illegal act."

In view of the fact that plaintiff was in direct
(23)

competition with the defendants, their contention is

somewhat difficult to understand. To equate plaintiff's

position to one whose alleged injury could be regarded

only as "remote," "incidental" or "consequential" rather
(24)

than "direct" is to disregard the reality of the relationship of the parties and the allegations of the complaint.

<sup>(22) 431</sup> F.2d 183, 187 (2d Cir. 1970), cert. denied, 401 U.S. 923 (1971).

<sup>(23)</sup> Cf. Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc., 454 F.2d 1292, 1295 (2d Cir. 1971), cert. denied, 406 U.S. 930 (1972), where our Court of Appeals stated: "this court has committed itself to the principle that in order to have 'standing' to sue for treble damages under § 4 of the Clayton Act, a person must be within the 'target area' of the alleged antitrust conspiracy, i.e., a person against whom the conspiracy was aimed, such as a competitor of the persons sued."

(emphasis supplied.)

<sup>(24)</sup> Cf. Data Digests, Inc. v. Standard & Poor's Corp., 43 F.R.D. 386, 387 (S.D.N.Y. 1967).

It is true, as defendants argue, that the "target" or objective of the collective efforts of the defendants was not the plaintiff, but rather the oil producing countries, as manifested by defendants' united front. However, plaintiff certainly was within the "target area" of the oil supply provision of their agreement, which is the crux of his first cause of action. Indeed, according to his claim, as a competitor he was in the direct line of fire. Specifically, under his version of the facts, plaintiff charges that the preexisting customer clause was imposed not only over his protest, but was intentionally directed toward him for the very purpose of impairing his existing relationship with his customers and eliminating him from competition, causing him direct losses. Since plaintiff was not merely "incidentally" or "remotely" affected by this provision of the Libyan Producers' Agreement, as, for instance, one of his customers or creditors might have been, the defendants' reliance upon the recently decided Long Island Lighting Company v. Standard Oil Company of California and Consolidated Edison Company of New York v. Standard Oil Company of California

<sup>(25)</sup> Docket Nos. 75-7177, 75-7178 (2d Cir., Aug. 22, 1975).

misplaced.

Defendants' related attack for lack of direct causal connection between their alleged unlawful conduct and plaintiff's claimed injury likewise must fail. Apart from the fact that the complaint does plead, in instance after instance, that plaintiff was damaged in that the pre-existing customer restriction foreclosed him from new customer and geographical markets, he charges that his existing customers, aided by other defendants and as part of their conspiratorial purpose, exploited the restrictions to force uncompetitive prices upon him, causing him to sustain losses in the millions. In any event, as this court has held, "the causation issue should not be resolved at this [pleading] stage of the action."

(c) The alleged inapplicability of the antitrust laws.

Here the defendants contend that the antitrust laws were never intended to apply to American companies in their dealings with a foreign government acting in its sovereign capacity. They rely upon the doctrine originally

<sup>(26)</sup> Data Digests v. Standard & Poor's Corp., 43 F.R.D. 386, 388 (S.D.N.Y. 1967).

Noerr Motor Freight, Inc., and further elucidated in

(28)

United Mine Workers of America v. Pennington, that:

"the Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." (29)

The so-called Noerr-Pennington doctrine is founded upon
the individual's constitutional right of petition under
the First Amendment and upon the corresponding concern that
the representatives in the legislatures retain access to
the opinions of their constituents, unhampered by collateral
(30)
regulation. These interests are not present in plaintiff's first claim, since his primary concern is not with
any action on the part of defendants to procure passage or
enforcement of any law, but rather with the clause of the
Agreement which contains the customer and market restriction

<sup>(27) 365</sup> U.S. 127, 136 (1961).

<sup>(28) 381</sup> U.S. 657, 669-70 (1965).

<sup>(29)</sup> Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 136 (1961).

<sup>(30) &</sup>lt;u>Id</u>. 137-38.

which is a strictly "private commercial activity" expressly excluded from the immunity of Noerr-Pennington by the

Court in Continental Ore Company v. Union Carbide & Carbon
(31)

Corporation.

#### (d) The act of state doctrine.

Defendants also urge that plaintiff's first

claim, as well as his two other antitrust claims, are

foreclosed by the act of state doctrine. This doctrine

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was originated in <u>Underhill v. Hernandez</u>, and precludes

judicial inquiry into the public acts of a foreign govern
ment within that sovereign's own territory. It is based

on "[c]onsiderations of comity, and of the highest ex
pediency," and particularly on the notion that "[i]t would

be not only offensive and unnecessary, but it would imperil

the amicable relations between governments, and vex the

peace of nations, to permit the sovereign acts or political

transactions of states to be subjected to the examination of

(33)

the legal tribunals of other states." The doctrine has

<sup>(31) 370</sup> U.S. 690, 707 (1962).

<sup>(32) 65</sup> Fed. 577, 579 (2d Cir. 1895), aff'd, 168 U.S. 250 (1897).

<sup>(33) &</sup>lt;u>Id</u>. 579.

trust injury flowing from a sovereign's acts which were
(34)
induced by or procured by the defendant in the action.

However, the concept has no bearing on plaintiff's first
claim because resolution of the issues raised thereunder
does not in any way require an inquiry into the judgment,
the conduct or acts of the Libyan government, or any alleged
conduct by the defendants which allegedly induced action by
(35)
the Libyan government. Rather, inquiry would be confined to the preexisting customer restriction contained in
(36)
the parties' Agreement.

Once again, defendants, by concentrating on the broad purposes of the Libyan Producers' Agreement to present a united front in meeting the ever increasing demands of Libya and the other oil producing countries, disregard that plaintiff's first claim is premised entirely under the

<sup>(34)</sup> American Banana Co. v. United Fruit Co., 213 U.S. 347, 357-58 (1909).

<sup>(35)</sup> Cf. Occidental Pet. Corp. v. Buttes Gas & Oil Co., 331 F. Supp. 92, 110 (C.D. Cal. 1971), aff'd per curiam, 461 F.2d 1261 (9th Cir.), cert. denied, 409 U.S. 950 (1972).

<sup>(36)</sup> Insofar as plaintiff's first claim raises the issue of the manipulation of Libyan tax laws by the seven majors, or any one of them, this reference is clearly for the purpose of setting a background and is not relied on by plaintiff to prove his claim of unlawful restriction of markets and customers.

particular provision of the Agreement which limits his

resale of oil received from Persian Gulf producer defendants to particular markets and customers. That provision

does not involve any question of Libyan conduct. At issue
is the restriction contained therein and not the governmental acts of a foreign sovereign. Thus, the act of

state doctrine is unavailable on defendants' motion to dismiss the first claim.

# (e) The "ancillary restraint" doctrine.

their contention that the Agreement, unlike the ordinary agreement for the purchase and sale of crude oil, was in effect a mutual assistance pact which served as protection for a Libyan producer whose production was cut back; that a preexisting customer was a condition precedent for such a Libyan producer to obtain Persian Gulf oil, which measured the obligation of the Persian Gulf producers to supply oil and limited their liability thereunder. Accordingly, defendants urge that the preexisting customer clause is ancillary to the Libyan Producers' Agreement and is reasonably necessary to the goals of that Agreement. This argument perforce acknowledges that restraints are imposed,

and immune from antitrust attack because they fall with—
in the protection of the "ancillary restraint" doctrine.

This concept, first articulated in United States v.

(37)

Addyston Pipe & Steel Co., recognizes such a defense where the restraint is "merely ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party."

The plaintiff responds that defendants' ancillary
restraint contention is flawed in several respects. First,
he argues that the preexisting customer clause, with its
customer and territorial restraints, is unlawful per se,
which renders the doctrine inapplicable in the light of
(38)
United States v. Arnold, Schwinn & Co. Plaintiff further
argues that the doctrine is unavailable to defendants since
it presupposes the existence of a lawful contract. Plaintiff

<sup>(37) 85</sup> Fed. 271, 282 (6th Cir. 1898), aff'd, 175 U.S. 211 (1899).

<sup>(38) 388</sup> U.S. 365, 380-82 (1966). See United States v. Glaxo Group Ltd., 302 F. Supp. 1, 10-11 (D.D.C. 1969), rev'd on other grounds, 410 U.S. 52 (1973).

claims the Libyan Producers' Agreement was forced upon him by the seven majors in furtherance and continuance of a preconceived anti-competitive purpose and thus is unlawful.

Next, he argues that even assuming a lawful contract, the restraint was neither reasonable nor necessary since it went far beyond what was required for the protection of the Persian Gulf producers insofar as they were obligated to supply oil. The defendants contend that it was reasonably necessary in order to limit the Persian Gulf producers' risk as obligors under the oil supply provision. These differing contentions present an issue of fact which must await trial.

# THE SECOND ANTITRUST CLAIM

D.

under his second claim, plaintiff alleges that
since at least 1970 the defendants and others engaged in
a combination or conspiracy in violation of the antitrust
(39)
laws; that as part of their unlawful conduct, and acting in concert, they conspired to and did withhold ninety
million barrels of crude oil to him under the Libyan Pro-

<sup>(39) 15</sup> U.S.C. §§ 1, 8.

ducers' Agreement; that they agreed to boycott him to deprive him of crude oil needed to fulfill his contracts with his customers. He further alleges that as a result of such group action he not only lost profits he would have made on the resale of the withheld oil, but also lost his existing contracts, opportunities for their renewal and access to new customers and markets; and finally that he was eliminated as a source of crude oil in the world crude oil market.

The defendants seek dismissal of this antitrust claim upon the same grounds, among others, which were advanced against the first claim. Substantially the same analysis which required rejection of those objections directs a similar result as to this claim. Thus, defendants advance the "target area," "act of state doctrine," and inapplicability of the antitrust laws, as well as other objections. Again defendants consider the Libyan Producers' Agreement only in its overall function to present a united front against OPEC countries, but ignore the specific provision of that Agreement upon which plaintiff centers his charge of antitrust activity by defendants. Here plaintiff is contesting the defendants' use or abuse of the oil supply

provision as an instrument to further a conspiracy to eliminate him as a competitor, which he alleges was in existence before the Agreement was executed.

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plaintiff, as in the first claim, is directly
in the "target area" of this clause so that he has standing to charge that defendants' "refusal to deal" and the
"group boycott," which also constituted a breach of the

terms of their Agreement, were with the intent and effect

of harming him. Plaintiff's "act of state" contention and
the inapplicability of the antitrust laws, based upon the

(40)

Noerr-Pennington doctrine is as misdirected to this

claim as it was to the first claim. Consideration of the

supply provision of the Agreement and its claimed breach
in furtherance of the defendants' alleged purpose to eliminate him as a competitor does not require inquiry into the
acts of Libya or any other foreign state.

Defendants further contend, as they did under the first claim, that the oil supply provision is not a contract for the sale of oil, but merely an insurance or

<sup>(40)</sup> Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 137 (1961); United Mine Workers of America v. Pennington, 381 U.S. 657, 669-70 (1965).

able restraint and thus is not subject to antitrust attack. But again, the validity of this contention centers about questions of fact as to this aspect of the Agreement, resolution of which is foreclosed on a motion to dismiss for failure to state a claim.

Defendants raise an additional objection to the second antitrust claim. They assert that this claim is one for breach of contract for failure to deliver a balance of ninety million barrels of crude oil due under the Libyan Producers' Agreement, which does not give rise to an antitrust claim. But again defendants ignore the allegations of the complaint, which go much beyond a charge that each defendant reneged on its commitment to the plaintiff. The defendants' contention that plaintiff "was denied access to oil by action of the Linyan governis simplistic. It is true ment, not the defendants," that the nationalization of Hunt's concession by Libya deprived him of an oil supply, but in that event the defendants agreed to supply him with Libyan oil, and if that were unavailable, with Persian Gulf oil to meet commitments to

<sup>(41)</sup> Reply memorandum p. 7.

his existing customers. Hunt's specific claim is that the Persian Gulf defendants, acting in concert with others, failed to live up to that obligation; that the withholding of the ninety million barrels due him was encompassed within he alleged conspiracy to boycott him and eliminate him as a competitor.

whether plaintiff can support his charges and show that a group boycott existed, and that its nature and extent was such as to constitute a violation of the Sherman Act, presents an issue of fact, the resolution of which must await another day.

For all the above reasons, the defendants' motion to dismiss the first and second claims must be denied.

#### THE THIRD ANTITRUST CLAIM

In this instance, too, plaintiff alleges that at least since 1970 the seven majors, along with others, named and unnamed, conspired or combined in violation of the Sherman Act and Wilson Tariff Act to preserve the competitive advantage of Persian Gulf crude oil relative to that of Libyan crude oil and to diminish competition

they conspired to prevent plaintiff Hunt and other Libyan producers from reaching an agreement with the Libyan government inconsistent with this competitive advantage; that in furtherance thereof, after obtaining Hunt's consent to the Libyan Producers' Agreement, which contemplated united front negotiations with Libya and other OPEC countries, the seven majors abandoned the agreed upon collective policy and manipulated the course of the Libyan negotiations so as to advance their own interests to the detriment of Hunt; and generally that the defendants deliberately pursued a course of action which led to the nationalization of Hunt's concession in Libya and his elimination as a Libyan crude oil producer.

In the light of plaintiff's aforesaid charges, the defendants' "act of state" plea rests on a solid foundation. The manipulative course of conduct attributed to the seven majors following the signing of the Libyan Producers' Agreement centers about negotiations and dealings with, and action thereafter taken by, the Libyan government. Hunt charges that in consequence he was forced to enter into arrangements with the Libyan government that were detrimental

were evicted by Libya from the Sarir Field upon his refusal, induced by the seven majors, to market British

Petroleum's production from its half of the Sarir Field

which Libya had nationalized; his oil production was cut

back fifty per cent by Libya; his right to produce and export oil was terminated, following his resistance, again

based upon defendants' inducement, to Libya's demand for

increased equity participation in his interests in Sarir;

finally, all his assets were nationalized by Libya. The

aforesaid claimed consequences of defendants' manipulative

course of action all involve acts of the Libyan government

which appear to be within the proscription of the act of

state doctrine.

But Hunt seeks to avoid the impact of this doctrine upon several grounds. First, he argues the third claim "challenges no act by the Libyan government, and does not ask this Court to sit in judgment on the acts of a sovereign state. As pleaded, the wrong done to Hunt was caused prior to any act by the Libyan government, for it was caused when the defendants entered into a conspiracy

<sup>(42)</sup> Hunt had the concession on the other half.

to advance their own Persian Gulf interests at his expense and to eliminate him from the industry." Although it may be, as plaintiff asserts, that the alleged conspiracy originated late in 1970, the acts and conduct of the defendants in furtherance thereof were committed after the signing of the Agreement in January 1971. True, inquiry may be properly directed to the acts and conduct of the seven majors and their codefendants, allegedly constituting their manipulative course of action. But the matter does not end there. To establish his claim plaintiff would have to show that such acts and conduct were a material that but for defendants' cause of his alleged damage; conspiratorial manipulative activities the Libyan government would not have cut back his production, shut off his oil supply completely and then nationalized his properties. This clearly would require inquiry into acts and conduct

<sup>(43)</sup> Winckler & Smith Citrus Prods. Co. v. Sunkist Growers,
Inc., 346 F.2d 1012, 1014 n.1 (9th Cir.), cert. denied,
382 U.S. 958 (1965). See also Credit Bureau Reports, Inc.
v. Retail Credit Co., 476 F.2d 989, 992 (5th Cir. 1973);
v. Retail Credit Co., 476 F.2d 989, 992 (5th Cir. 1973);
Sam S. Goldstein Indus., Inc. v. Botany Indus., Inc., 301
Sam S. Goldstein Indus., Inc. v. Botany Indus., Inc., 301
F. Supp. 728, 733-34 (S.D.N.Y. 1969); National Auto Brokers
Corp. v. General Motors Corp., 60 F.R.D. 476, 489-90 (S.D.
Corp. v. General Motors Corp., 60 F.R.D. 476, 660
Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656, 660
Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656, 660
Inc. v. Peoples Gas Light & Plaintiff must adequately under § 1 of the Sherman Act, plaintiff must adequately allege that he was "damaged" by the violation of the Act.

of Libyan officials, Libyan affairs and Libyan policies with respect to plaintiff's as well as other oil producers' properties and the underlying reasons for the Libyan government's actions.

In Occidental Petroleum Corporation v. Buttes

(44)

Gas & Oil Co. the facts of which substantially parallel
those of the instant case, plaintiff charged that the defendant had "induced and procured" various foreign governmental authorities to do certain executive acts which deprived plaintiff of its concession for oil production. The
court found that the act of state doctrine, as set forth in
(45)
American Banana Company v. United Fruit Company, was the
"relevant and dispositive principle." The court specifically considered the contention, heavily relied upon by Hunt
here, that the doctrine was inapplicable because plaintiffs

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<sup>(44) 331</sup> F. Supp. 92, 107 (C.D. Cal. 1971), aff'd per curiam, 461 F.2d 1261 (9th Cir.), cert. denied, 409 U.S. 950 (1972).

<sup>(45) 160</sup> Fed. 184 (C.C.S.D.N.Y.), aff'd, 166 Fed. 261 (2d Cir. 1908), aff'd, 213 U.S. 347 (1909).

<sup>(46)</sup> Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331 F. Supp. 92, 108 (C.D. Cal. 1971), aff'd per curiam, 461 F.2d 1261 (9th Cir.), cert. denied, 409 U.S. 950 (1972).

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were not complaining "of the acts of foreign states set forth in the complaint, but rather only of the defendants' As a major item conduct in 'catalyzing' those acts." in rejecting plaintiffs' efforts to avoid the impact of the act of state doctrine, the court stated that "[b]ecause a private antitrust claim requires proof of damage resulting from forbidden conduct . . . plaintiffs necessarily ask this court to 'sit in judgment' upon the sovereign acts pleaded, whether or not the countmies involved are considered The court followed American Banana and co-conspirators." granted the defendant of motion to dismiss. Here the operative facts are even more strikingly similar to American Banana than they were in Occidental, since the foreign act of state complained of in American Banana was the nationalization of plaintiffs' production facilities.

Next, plaintiff urges that the Supreme Court, and Continental in United States v. Sisal Sales Corp. created an Ore Co. v. Union Carbide & Carbon Corp.,

<sup>(47)</sup> Id. 110.

<sup>(48)</sup> Id.

<sup>(49) 274</sup> U.S. 268 (1927).

<sup>(50) 370</sup> U.S. 690 (1962).

exception to American Banana, which applies to his third claim. In Sisal, the Court explicitly distinguished American Banana on the ground that the conspiracy in Sisal was "made effective by acts done" within the United States and thus was not "'[a] conspiracy in this country to do acts in another as was the case in American Banana and is jurisdiction," the case presently before this court. In Continental Ore, the Court rested its decision on similar grounds, but also emphasized that no "official within the structure of the was involved. Canadian Government"

It may well be that recent public disclosure of the dealings of multi-national corporations with foreign governments which have an adverse impact upon American interests justifies a reappraisal of the act of state doctrine to determine whether its scope should be confined. However, in the absence of new doctrinal trends in Supreme Court opinions, reassessment of the range of the doctrine must Accordingly, rest with that Court and not this court.

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<sup>(51)</sup> United States v. Sisal Sales Corp., 274 U.S. 268, 276 (1927).

<sup>(52) 370</sup> U.S. 690, 706 (1962).

<sup>(53)</sup> Cf. United States v. Ullmann, 221 F.2d 760, 761-62 (2d Cir. 1955), aff'd, 350 U.S. 812 (1956). See also Booster Lodge No. 405, Int'l Ass'n of Machinists and Aerospace

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the defendants' motion to dismiss the third claim is granted.

## THE BREACH OF CONTRACT CLAIM

Plaintiff alleges that defendants breached the Libyan Producers' Agreement by failing to supply him with ninety million barrels of Libyan and/or Persian Gulf crude oil due to him thereunder, and as a result he sustained damages of at least linety million dollars.

respect to the breach of contract claim pending arbitration pursuant to the arbitration provision in the Agreement.

However, only one defendant, Texaco, has served a demand
that the claim be submitted to arbitration. Thereupon

footnote 53 cont'd

Workers, AFL-CIO v. National Labor Relations Bd., 459 F.2d 1143, 1150 n.7 (D.C.Cir. 1972); United States Gypsum Co. v. United Steelworkers of America, 384 F.2d 38, 44 (5th Cir. United Steelworkers of America, 389 U.S. 1042 (1968); United States 1967), cert. denied, 389 U.S. 1042 (1968); United States v. Finazzo, 288 F.2d 175, 177 (6th Cir. 1961); G.I. Distributors, Inc. v. Murphy, 336 F. Supp. 1036, 1037 (S.D. N.Y. 1972).

<sup>(54)</sup> Paragraph 9(d) of the Agreement reads as follows:

"Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration . . . "

plaintiff moved to stay Texaco's proposed arbitration pending determination of his antitrust claims, now reduced to two. That the fourth claim is subject to arbitration under the Agreement is beyond dispute. The issue, however, is whether that claim should be submitted to arbitrators for their determination at the same time that plaintiff's antitrust claims go forward in this court for judicial determination.

terest in the enforcement of the antitrust laws makes anti(55)

trust claims inappropriate subjects for arbitration. As
a corollary, a stay of antitrust judicial proceedings in
favor of arbitration will not be granted where the arbitrators would be required to consider antitrust issues with
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respect to the controversy to be determined by them.

Thus the precise question presented by the respective motions
is whether the antitrust issues so permeate the entire case

<sup>(55)</sup> American Safety Equip. Corp. v. J.P. Maguire & Co., 391 F.2d 821, 827-28 (2d Cir. 1968). See also Cobb v. Lewis. 488 F.2d 41, 47 (5th Cir. 1974); Helfenbein v. International Indus., Inc., 438 F.2d 1068, 1070 (8th Cir.), cert. denied, 404 U.S. 872 (1971); A.& E. Plastik Pak Co. v. Monsanto Co., 396 F.2d 710, 715-16 (9th Cir. 1968).

<sup>(56)</sup> American Safety Equip. Corp. v. J. P. Maguire & Co., 391 F.2d 821, 828 (2d Cir. 1968).

that it would not be "easy for an arbitrator to separate the antitrust issues from the other issues in the case, and to proceed to decide the arbitrable issues without inquiry into the ant trust issues."

The defendants argue that the arbitrator would not be required to resolve the antitrust claims and, by way of example, add "if questions were to arise as to the meaning of particular words or clauses in the contract, an arbitrator would be able to determine these matters without delving into antitrust issues." But the meaning of particular words or clauses in the contract is included among other issues the court would have to consider under the first and second antitrust claims.

The alleged breach of contract is an essential ingredient of plaintiff's second antitrust claim. The hard thrust of plaintiff's charge is that the withholding of ninety million barrels of oil due him under the supply provision was not only a breach of the Agreement, but also a concerted refusal to deal with him and a group boycott in furtherance of the conspiracy to eliminate him as a competitor. Thus what is at issue is not a mere breach of contract,

<sup>(57)</sup> Cobb v. Lewis, 488 F.2d 41, 50 (5th Cir. 1974).

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which to be sure is within the competence of an arbitrator's determination and by itself, if isolated, would not involve antitrust issues. However, the court will have to decide whether a breach of the oil supply provision occurred, and if so, whether it was committed by defendants individually or acting in concert and with the purpose and intent of eliminating him or injuring him as a competitor.

-

Also at issue are the parties' conflicting positions as to the option clause under the oil supply provision. The defendants contend that the option clause gave them an absolute, unrestricted right to pay cash instead of supplying oil. Obviously this would be advanced as a defense in the arbitration. Plaintiff's differing version that the payment of cash could not be used to freeze him out of oil to which he was entitled, and thereby to eliminate him as a competitor, is a central issue under the antitrust charge.

It is unrealistic to assert, as defendants do, that the breach of contract claim can be isolated so that the arbitrator can decide the issues thereunder without inquiry into matters that are material to the antitrust claims. The breach of contract and antitrust claims are so inextricably interrelated, one with the other, that it would not be easy, in the light of the parties' contentions, for the arbitrators to avoid wandering into the thicket of complex antitrust issues.

If anything, Texaco's demand for arbitration

demonstrates that its purpose indeed is to have the arbitrator consider plaintief's antitrust claims. The comtrator of this very lawsuit and the assertion of the

mencement of this very lawsuit and the assertion of the
antitrust claims are alleged by Texaco to constitute
a breach of contract by Hunt, which Texaco asserts is arbitrable and which it seeks to submit to the arbitrator.

<sup>(58)</sup> The second dispute presented by Texaco's demand is the

<sup>&</sup>quot;2. You have breached the promise you made in the contract which induced Texaco to enter into the contract with you and upon which Texaco relied in conferring valuable benefits to you thereunder. The contract contains the following essential promise:

<sup>&#</sup>x27;Each party hereto covenants that it will not assert any claim against any other party or parties arising out of this agreement, except claims for non-performance of this agreement.'

In your aforementioned lawsuit, [this action] you purport

to assert claims against Texaco arising out of the contract for other than its non-performance, thereby breaching your covenant and depriving Texaco of the consideration for the valuable benefits Texaco delivered to you pursuant to the contract." (emphasis supplied.)

Such a submission would require lay arbitrators to delve into whether or not the antitrust claims were foreclosed (59) by the parties' Agreement. Texaco argues that Hunt violated the Agreement by commencing this antitrust suit. The argument proceeds:

"The issue before the arbitrators is not whether Hunt's customer provision claim may go forward. That unquestionably is a matter to be determined by this Court. Nor, of course, will the arbitrators be asked to determine the legality of the customer provision.

"The question the arbitrators will have is whether someone may scheme to exact property from another by promising not to bring a potential claim and, once the property is given to him in reliance on his promise, turn around and bring the claim anyway and still return the benefits of his broken promise."

We are not prepared to apply an Alice in Wonderland meaning to this language. It so manifestly indicates that Texaco does intend to present to and have the arbitrators pass upon

<sup>(59)</sup> An agreement to waive future antitrust violations would be contrary to public policy. Gaines v. Carollton Tobacco Bd. of Trade, Inc., 386 F.2d 757, 759 (6th Cir. 1967); Fox Midwest Theatres, Inc. v. Means, 221 F.2d 173, 180 (8th Cir. 1955); Westmoreland Asbestos Co. v. Johns-Manville Corp., 39 F. Supp. 117, 119 (S.D.N.Y. 1941), aff'd, 135 F.2d 844 (2d Cir. 1943). On the other hand, the Court of Appeals has held that arbitration of antitrust claims is "proper . . [when] the agreement to arbitrate was made after the dispute arose." Coenen v. R.W. Pressprich & Co., 453 F.2d 1209, 1215 (2d Cir.), cert. denied, 406 U.S. 949 (1972). See also Cobb v. Lewis, 488 F.2d 41, 48 (5th Cir. 1974).

the issues which are the very essence of one of plaintiff's antitrust claims that one wonders the argument was advanced.

Accordingly, the plaintiff's cross-motion for a stay of Texaco's proposed arbitration of the breach of contract claim is granted; the motion by the other defendants for a stay of proceedings of the fourth claim in this action is granted except insofar as the breach of contract claim alleged therein is relevant and pertinent under the first and second antitrust claims; further, those defendants, as well as Texaco, are stayed from proceeding to arbitration as to the breach of contract claim until the final determination of this action.

Since the fourth claim is the subject of a stay both in this action and in arbitration, it is unnecessary to pass upon the alternative motion for its dismissal or partial summary judgment thereon.

In conclusion, the defendants' motion to dismiss is denied as to the first and second claims; granted as to the third claim; and the respective motions as to the fourth claim are disposed of as indicated.

Dated: New York, N. Y. November 5, 1975 United States District Judge

Plaintiffs' Notice of Motion Pursuant to Rule 54(b)

(Pages JA111 to JA121)

JA 111

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NELSON BUNKER HUNT,

Plaintiff, : 75 Civ. 1160 (EW)

-against-

NOTICE OF MOTION

MOBIL OIL CORPORATION, et al.,

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the affidavit of Daniel

P. Levitt, sworn to December 12, 1975, and the prior proceedings
had herein, the undersigned will move this Court before the
Honorable Edward Weinfeld, on December 23, 1975, or as soon
thereafter as counsel can be heard, for an order pursuant to
Federal Rule of Civil Procedure 54(b), directing the entry of
a final judgment dismissing the third count in the complaint in
this action and certifying that there is no just reason to delay
an appeal of this Court's dismissal of that claim, and for such
other and further relief as to the Court may seem just and proper.

Dated: New York, New York December 12, 1975

Yours, etc.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By

Attorneys for Plaintiff

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CHARLES F. KAZLAUSKAS, JR., ESQ. Texaco, Inc. 135 E. 42nd Street New York, N.Y. 10017 Opinion of Weinfeld, D.J., Dated January 22, 1976

(Pages JA123 to JA124)

75 Civil 1160

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Familiarity is assumed with this court's opinion and decision which denied certain defendants' motions to dismiss plaintiff's first and second antitrust claims, but granted dismissal of his third antitrust claim, without leave to replead. Plaintiff now moves, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, for an order directing the entry of final judgment dismissing that claim upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

The immediate motion centers about various contentions made by defendants with respect to the "act of state" doctrine in support of their motions to dismiss plaintiff's complaint. This court was of the view that issues raised as to the first and second antitrust claims could be determined without reference to or application of the "act of state" doctrine. However, as to the third claim, the conduct attributed to defendants appeared to bring that doctrine into the and consequently dismissal of that claim was required. In granting the dismissal, the court observed that recent public disclosures indicated the desirability of a reassessment of the "act of state" doctrine, but in the absence of doctrinal trends the matter was for consideration by higher authority and not by the district court.

Since the filing of the court's opinion on November 5, 1975, there have been further public disclosures of dealings of multi-national corporations with foreign governments, including payments to influence action of such governments or their officials which have an adverse impact upon American interests and concerns. The current exposures warrant consideration in the public interest of the continued viability of the "act of state" doctrine, which, if modified in any respect, may have a direct and significant bearing upon plaintiff's third claim. Moreover, any change may affect plaintiff's first two claims since defendants also rely upon that doctrine in resisting them.

Were plaintiff's instant motion under Rule 54(b) denied, and thereafter in the event of any appeal from any judgment entered with respect to plaintiff's first two claims, were this court's dismissal upon appellate review as to the third claim reversed, it would mean another long trial, as is forecast on the remaining claims. This would require a duplicative trial and additional but unnecessary expense to the parties.

Finally, an appeal, which it is assumed will be prosecuted expeditiously, would in no way delay the prospective trial of the claims that remain since, in view of the extensive discovery which the parties are now engaged in, the case will not be ready for trial until the fall at the earliest — this, apart from the court's other trial commitments; and clearly an appeal would not, at least it should not, interfere with the discovery process.

The motion for an order under Rule 54(b) is granted upon the express condition that the appeal be prosecuted with dispatch.

Dated: New York, N. Y.

January 22, 1976

United States District Judge

Judgment Dismissing Third Claim in Complaint

(Page JA126)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NELSON BUNKER HUNT,

Plaintiff,

75 Civ. 1160 (EW)

-against-

JUDGMENT

MOBIL OIL CORPORATION, et al.,

Defendants.

An order having been entered herein on November 5, 1975, dismissing the third cause of action of the complaint, and an order having been entered herein on January 22, 1976, determining that there is no just reason for delay and expressly directing the entry of judgment, it is

ORDERED, ADJUDGED AND DECREED that the third cause of action of the complaint be, and the same hereby is, dismissed as to all defendants.

DATED NEW YORK, N.Y. JANUARY 30, 1976

Edward Weinfeld, D.J.

Judgment Entered this

5 day of February , 1976

RAYMUND F. BURGHARDT Clerk of the Court Plaintiffs' Notice of Appeal

(Pages JA128 to JA130)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NELSON BUNKER HUNT, W. HERBERT HUNT and LAMAR HUNT,

Plaintiffs,

75 Civ. 1160 (EW)

-against-

MOBIL OIL CORPORATION, TEXACO, INC., STANDARD OIL COMPANY OF CALIFORNIA, THE BRITISH PETROLEUM COMPANY, LTD., SHELL PETROLEUM COMPANY, LTD., EXXON CORPORATION, GULF OIL CORPORATION, OCCIDENTAL PETROLEUM CORPORATION, GRACE PETROLEUM CORPORATION, and GELSENBERG, AG,

NOTICE OF APPEAL

Defendants.

PLEASE TAKE NOTICE that plaintiffs Nelson Bunker Hunt, W. Herbert Hunt and Lamar Hunt, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment and decree entered in this case on February 5, 1976.

Dated: New York, New York February 9, 1976

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By

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